

Volume 2

Pages 172 - 368

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK

DEMETRIC DI-AZ, OWEN DIAZ AND)
LAMAR PATTERSON)
)
)
Plaintiffs,)
)
vs.) No. C 17-6748 WHO
)
TESLA, INC., dba TESLA MOTORS,)
INC., CITISTAFF SOLUTIONS, INC.,)
WEST VALLEY STAFFING GROUP,)
CHARTWELL STAFFING SERVICES, INC.,)
and DOES 1-50, inclusive,)
) San Francisco, California
Defendants.) Tuesday
) September 28, 2021
) 8:00 A.M.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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Official Reporter - US District Court

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- Tesla, Inc.

YUSUF MOHAMED, ESQ.
- Tesla, Inc.

— — —

1 **Tuesday - September 28, 2021**

1 **8:01 a.m.**

2 **P R O C E E D I N G S**

3 **---000---**

4 (Proceedings were heard out of presence of the jury:)

5 **THE COURT:** All right. There are three things on my
6 mind this morning. The first one, I saw the Marconi
7 designations and counterdesignations. Did the plaintiffs
8 intend to respond to that, Marconi?

9 **MR. ORGAN:** Yes, Your Honor. I believe we did file
10 something late last night; or if not, then we're planning to
11 file something early this morning.

12 **THE COURT:** Okay. I didn't see it when I came in this
13 morning.

14 **MR. ORGAN:** Okay.

15 **THE COURT:** I could have missed it, so I'll go take a
16 look.

17 When do you expect -- when would you like to put that on?

18 **MR. ORGAN:** I think at the earliest it would be
19 tomorrow, Your Honor.

20 **THE COURT:** Okay. I'll take a look; and if it's -- if
21 I can get at it while you're still here --

22 **MR. ORGAN:** I'll check with my colleague to make sure.
23 I wasn't preparing it, so...

24 **THE COURT:** All right. Then the second thing is the
25 Demetri Di-az objections. And I'll sustain the remaining

1 objections to the counterdesignations. The employment-related
2 one on West Valley is not relevant, and 403 I think also
3 applies because it would be confusing. And it's just --
4 there's not enough information, even if it was relevant, to
5 actually get his view on who he was employed by.

6 And the other designation, which is Designation Number 9,
7 what happened outside of the workplace doesn't matter. The use
8 of the "N" word outside of the workplace doesn't matter, and I
9 think 403 also applies.

10 So that's my ruling on those.

11 And then the final thing on my mind is I am going to post
12 at some point, when I let Ms. Davis know that she can do it and
13 she has the time to do it, draft final Jury Instructions. So
14 I've put them in the way that I think they ought to go. I've
15 left the sequencing in the way that you did, but I now have
16 them in a form that we can actually use on Friday.

17 So what I want you to do is, if you have any objections to
18 the instructions, any additions to the instructions, anything
19 with respect to the instructions other than the way that
20 they're currently presented, post by Thursday at 3:00 o'clock
21 what else you would like to see in the instructions.

22 And refer to the instruction by the page number. So I've
23 paginated them. I've left the numbers at the top blank because
24 I don't think we'll be using all of the sort of general
25 instructions that are there.

1 But if you would do that by Thursday, to the extent that
2 we know what should be in and out by Thursday, I would
3 appreciate that. And we will meet on Friday immediately after
4 the testimony, whatever it is.

5 Mr. Organ.

6 **MR. ORGAN:** Yes, Your Honor. Could we have till 3:30?

7 **THE COURT:** Yes.

8 **MR. ORGAN:** Thank you.

9 **THE COURT:** All right. Now, is there anything else
10 from the plaintiff's perspective that we ought to deal with
11 today?

12 **MR. ORGAN:** Two things, Your Honor.

13 In line with the Court's request that we address any
14 witness issues, I had -- Ms. Heisen is coming in, the PMK --

15 **THE COURT:** Tell me who is coming in today. I'd like
16 to know.

17 **MR. ORGAN:** So Heisen is coming in first. And then
18 Mr. Romero, we'll finish his testimony after she's done. And
19 then we have Wayne Jackson, Your Honor.

20 **THE COURT:** Okay.

21 **MR. ORGAN:** And I believe Delgado, Ms. Delgado. And
22 then it's a question of whether Mr. Quintero -- whether we have
23 time for Quintero, but it's our hope to get to him.

24 **THE COURT:** Okay.

25 **MR. ORGAN:** And so that would -- that should fill the

1 day.

2 **THE COURT:** Okay. Great.

3 You're going to take Heisen out of order, is that --

4 **MS. JENG:** Your Honor, could I add? This may be
5 relevant information, but I just spoke with Annalisa Heisen.
6 She's supposed to testify over Zoom. She, I think, is
7 currently going into labor.

8 **THE COURT:** Okay. She may not be available.

9 **MS. JENG:** Right. So I just spoke to her, like,
10 five minutes ago.

11 **THE COURT:** Okay. All right. Well --

12 **MR. ORGAN:** I guess I'm not calling Ms. Heisen,
13 Your Honor. I guess we'll be designating testimony then,
14 Your Honor.

15 **THE COURT:** I assume that that's --

16 **MS. KENNEDY:** That's perfectly fine.

17 **MS. JENG:** We don't anticipate she will be available
18 the rest of the week.

19 **THE COURT:** Okay. Congratulations to her.

20 **MR. ORGAN:** So we'll have those designations to
21 Your Honor this evening.

22 **THE COURT:** Okay.

23 **MR. ORGAN:** And okay. Well, I guess we're going to
24 come back with Mr. Romero not out of order.

25 **THE COURT:** Great.

1 **MR. ORGAN:** I guess I do have a question, Your Honor.
2 Since we took him as an adverse witness, is there -- is the
3 defense entitled to do leading questions? I don't want to
4 object if that's your ruling.

5 **THE COURT:** No. The defense will be doing direct
6 questioning.

7 **MR. ORGAN:** Okay. Thank you, Your Honor.

8 **THE COURT:** Okay. All right. And, Ms. Kennedy, is
9 there anything from your perspective that we ought to talk
10 about this morning?

11 **MS. KENNEDY:** No, I don't believe so.

12 I think we're starting with Mr. Romero?

13 **THE COURT:** Yeah.

14 **MS. KENNEDY:** Okay.

15 **THE COURT:** Good. All right.

16 **MR. ORGAN:** Your Honor, just one thing.

17 So logically now we will get to Mr. Quintero, I assume.
18 This does change our timing a little bit obviously.

19 So we'll play Mr. McGinn. During one of the breaks, I'll
20 see if we can queue up the Demetric testimony with your
21 rulings. I'm not sure we'll be able to do that, but this may
22 affect us at the end of the day.

23 **THE COURT:** Okay. So that's fine, and I'm not going
24 to hold it against you given Ms. Heisen's condition.

25 **MR. ORGAN:** Okay. Thank you, Your Honor.

1 **THE COURT:** Okay.

2 (Whereupon there was a recess in the proceedings

3 from 8:10 a.m. until 8:28 a.m.)

4 (Proceedings were heard in the presence of the jury.)

5 **THE COURT:** All right. Please be seated everybody.

6 Good morning, ladies and gentlemen. Welcome. Thank you
7 very much for being as prompt as you've been.

8 We're now going to continue the trial and the examination
9 by the defendant of Mr. Romero.

10 We'll start. Ms. Kennedy, good morning.

11 **MS. KENNEDY:** Good morning, Your Honor.

12 EDWARD ROMERO,

13 called as a witness for the Plaintiff, having been previously
14 duly sworn, testified further as follows:

15 CROSS-EXAMINATION

16 **BY MS. KENNEDY**

17 **Q.** Good morning, Mr. Romero.

18 **A.** Good morning.

19 **Q.** Good morning, Your Honor. Good morning, counsel.

20 Mr. Romero, how are you feeling this morning?

21 **A.** I've got diabetes and high blood pressure, but right now I
22 feel okay.

23 **Q.** Okay. If you need a break, just let me know, but I'll
24 make this as short as I can. Okay?

25 **A.** Thank you.

1 **Q.** I understand from your testimony in response to
2 Mr. Organ's questions that you were a contractor for -- at the
3 Tesla facility in, say, early mid-2015; is that right?

4 **A.** Yes.

5 **Q.** And at some point in time you became a Tesla employee?

6 **A.** Yes.

7 **Q.** How long did you actually work at Tesla as an employee?

8 **A.** One year.

9 **THE COURT:** Ms. Kennedy, let me interrupt you.

10 A couple of folks have walked in. I want to make sure
11 that anybody who is going to be a witness does not sit in
12 during the testimony. So, I'm sorry, you'll have to wait
13 outside. Thank you very much.

14 And I'd like the lawyers to be paying attention to this
15 because it's not the first time that it's happened.

16 All right. I'm sorry. Please go ahead.

17 **MS. KENNEDY:** All right. I didn't see anyone come in.

18 **BY MS. KENNEDY**

19 **Q.** I'm sorry. So, Mr. Romero, you were at Tesla as an
20 employee for about a year; is that correct?

21 **A.** I was a Tesla employee for one year.

22 **Q.** So let me just ask a couple questions about the "N" word.

23 When you were working there as a contractor resident
24 employee, did Mr. Owen Diaz ever tell you that he had been
25 called the "N" word?

1 **A.** I don't think he told me that he had used that -- I mean,
2 that anybody had used the "N" word. There was a picture that
3 he alluded to that was -- I think that was racial.

4 **Q.** Right. That was a cartoon or the drawing you were shown
5 yesterday?

6 **A.** Yes. Uh-huh.

7 **Q.** Did you actually have any interactions with Mr. Diaz when
8 you were working there either as a contractor or as an employee
9 of Tesla?

10 **A.** Other than as a contractor?

11 **Q.** Yeah.

12 **A.** No.

13 **Q.** When you talked to Mr. Diaz, did you ever have any issues
14 with how he was interacting with you?

15 **A.** No.

16 **Q.** Did you ever -- did he ever complain -- did Mr. Diaz ever
17 complain to you that anyone had said to him, quote, Go back to
18 Africa?

19 **A.** No.

20 **Q.** Did Mr. Diaz ever tell you that anyone had ever used this
21 phrase -- and I'm sorry to say this -- the "porch monkey"?

22 **A.** No.

23 **Q.** Mr. Diaz has testified in this case that he reported to
24 you, at least, quote, three to seven times that other employees
25 were calling him the "N" word. Is that true or false?

1 **A.** I don't remember him ever saying that.

2 **Q.** And based on your experience being either as a contractor
3 at Tesla or as an employee at Tesla, if Mr. Diaz had told you
4 that those type of racial epithets had been used, what would
5 you have done?

6 **A.** I would have, you know, take note of what they were saying
7 for one thing or, you know, remembered what they would have
8 said, and then in an email -- primarily in an email and
9 sometimes verbally I'd pass it up to my supervisors.

10 **Q.** And I understand you did that with respect to this issue
11 regarding this employee Troy Dennis.

12 Remember the email that Mr. Organ showed you yesterday?
13 You actually reported the exact --

14 **A.** Yes, I did.

15 **Q.** -- racial epithets?

16 **A.** It's been going, like, six years now. There's a lot of
17 things I don't remember.

18 **Q.** Certainly.

19 **A.** But the email that he alluded to or that was -- they
20 mentioned yesterday is one I just didn't remember; but after
21 looking at it, you know, you kind of make memory and say,
22 "Well.." But I did report it.

23 **Q.** Right. And do you recall that you reported the exact
24 racial epithet that had been alleged to have been made?

25 **A.** Say that again.

1 **Q.** Do you recall in that email, which was Exhibit 106, that
2 you did actually report the actual racial epithet in that
3 email?

4 **A.** I did.

5 **Q.** Now, I understand approximately sometime in October of
6 2015 were you advised of any type of complaints about Mr. Diaz
7 and his interactions with his coworkers?

8 **A.** In all fairness to Owen, you know, it was an environment
9 that is a big place. There's thousands of people working
10 there. There's a lot of issues that kind of irritate people.
11 You know, maybe somebody wants parts or somebody wants this, so
12 they're waiting. And sometimes they just -- they just think
13 they're not doing their job and things like that.

14 My experience in being there, I -- my goal was to make my
15 team united, make them work together, have good customer
16 service, and so on. So whenever I got complaints, I always
17 listened to both sides closely, you know, the complainer and so
18 on.

19 And as a rule, I tried to talk to my people, you know,
20 about, you know, what happened and when did it happen and, you
21 know, I'd want to hear their side of the story.

22 We primarily had complaints from a department, and I can't
23 remember the name of the department right now, but they had a
24 lot of movement of product on the floors.

25 The elevator service, we handled primarily the movement of

1 product from the elevator upstairs to the -- I mean, to the
2 second floor/first floor, first floor/second floor, and the --
3 an area where things were stationed near the elevators. Okay?

4 So when I got complaints, I tried to listen to both sides.
5 That department, I think the supervisor's name was DelaGrande
6 or something like that. She -- there was a rumor going around
7 that she thought I was favoring -- favoring Owen. Okay? And
8 in a way I was. He was one of my guys. I didn't want to jump
9 to any conclusions. I just wanted, you know, to be fair, as
10 fair as I could be.

11 **Q.** And is that person you're talking about, is that
12 Joyce DelaGrande?

13 **A.** I'm sorry?

14 **Q.** Was that Joyce DelaGrande or DelaGrande that you were
15 talking about?

16 **A.** Yes.

17 **Q.** And was she in the materials or in the production?

18 **A.** Yeah, I don't remember the name of her department, but it
19 had to do with material -- materials, yeah.

20 **Q.** And in your role, say, in this October, say, December 2015
21 time period, did Owen Diaz have complaints to you about some of
22 the folks working for Joyce DelaGrande?

23 **A.** Yes.

24 **Q.** And did you try to listen to both sides?

25 **A.** Yes.

1 Q. And you said that you were favoring Owen Diaz. What do
2 you mean by that?

3 A. Well, that was her opinion. Excuse me. That was her
4 opinion.

5 To be fair to Owen, as an example, a number of times I
6 would ask him: Well, can your guys -- can they send me an
7 email? Can they tell me what's going on?

8 You know, it wasn't that I was looking for anything to
9 take to Owen. It was more: Take responsibility for your
10 actions, you know. Don't just say that somebody is not doing
11 something.

12 So I wanted to just investigate as much as I could, but
13 more to be fair with my guys.

14 Q. And your guys would include Owen Diaz and the other
15 elevator folks?

16 A. Yeah. And I can add that they complained about Owen, but
17 they complained about a lot of our people there. It wasn't
18 just him. It was -- you know, sometimes on another shift they
19 would complain that they're not doing their job. They're not
20 doing. They're not taking materials up and down. You know,
21 things like that. So it was kind of a stressful place to be.

22 Q. How would you describe the importance of the elevator
23 operator position or the elevator -- the lead elevator operator
24 position in the Tesla facility when you were there?

25 A. I guess I would say that we were somewhat key to making

1 sure production continued because if we didn't move the
2 materials in a timely manner, well, a lot of car parts weren't
3 taken down so they were waiting. They might have to hold the
4 line for a few minutes or, you know, for a time to make sure we
5 got the materials to them. Okay?

6 Could I add something? We moved a lot of materials, but
7 it wasn't just car parts. You know, we were moving recycling
8 materials, trash, other types of supplies, maybe janitorial
9 supplies going to one place, and so on. So we would have to
10 move all that type of material.

11 **Q.** When you were working at Tesla as an employee or as a
12 contractor, did you ever hear anyone refer to Mr. Owen Diaz
13 using the "N" word?

14 **A.** As to him using it?

15 **Q.** No. As to someone else referring to Mr. Diaz using the
16 "N" word.

17 **A.** Not that I can remember. I don't think so.

18 **Q.** I want to move forward to basically this issue concerning
19 the cartoon we talked about yesterday. It was in January of
20 2016, to give you some reference.

21 Mr. Diaz sent you a copy of that cartoon and you got that
22 email?

23 **A.** Uh-huh.

24 **Q.** My question for you, Mr. Romero, is: What was your first
25 reaction when you saw that?

1 **A.** Umm, I was shocked. Okay? I was shocked that someone
2 would do that. Okay? By the time I got it, because I think --
3 if I remember correctly, Owen was working on the night shift,
4 if I remember correctly. Okay? So I understood that he had
5 already talked to two or three people before he talked to me.
6 Okay? But when I got it, I was shocked, and I think -- I
7 think -- I thought it was important so I reported it
8 immediately.

9 **Q.** And when you talked to Mr. Diaz, how did he describe how
10 he felt when he saw this cartoon?

11 **A.** He was hurt. He was very, very hurt. And I told him: I
12 don't blame you, you know. That's not right, you know. So,
13 you know, we initiated the proper steps that should be taken to
14 rectify it.

15 **Q.** When you talked to Mr. Diaz after he sent you the email
16 and you talked to him, did he tell you if he had determined who
17 had written or drawn this cartoon or this --

18 **A.** Yeah.

19 **Q.** -- as he described it, a racist effigy?

20 **A.** I think by that time he mentioned it was Ramon Martinez.
21 Okay? He worked for the recycling team, I think.

22 **Q.** And when he told you that it was Ramon Martinez, did he
23 tell you anything else at that time about Ramon Martinez, if
24 you recall?

25 **A.** I can't recall anything specific at that moment, you know.

1 We were kind of focused on the drawing.

2 **Q.** And once you got the drawing, I think you forwarded it
3 over to Victor Quintero; is that correct?

4 **A.** Yes.

5 **Q.** And you sent it over there because he was in charge of
6 recycling, as I understand?

7 **A.** He was supervising -- Ramon Martinez reported to him, you
8 know, somewhere along the chain there somehow.

9 **Q.** And at some point in time did you talk with either Wayne
10 Jackson or Victor Quintero about this drawing or this cartoon?

11 **A.** I talked to Wayne Jackson at nextSource about it. Okay?

12 **Q.** Why were you talking to Wayne Jackson at nextSource
13 about it?

14 **A.** Because he was a contract employee. Right?

15 **Q.** When you say "he," you mean Wayne Jackson was the contract
16 employee or Owen Diaz was the contract employee?

17 **A.** Owen -- Owen Diaz was. And I talked to Wayne because he
18 was like a -- like a project manager, you know, for, I guess,
19 nextSource, overseeing the activities at the plant for
20 nextSource.

21 **Q.** Okay. And after you reported this, I guess, up to Victor
22 Quintero and you talked to Wayne Jackson and Victor Quintero,
23 what was your involvement, if anything, with respect to this
24 drawing or this cartoon?

25 **A.** Well, I thought it was my responsibility to report it.

1 Okay? Wayne and I went over to speak with Mr. Quintero.

2 Mr. Quintero thought -- at the time he didn't understand
3 what the drawing was. Okay? And Wayne and I told him that it
4 was very derogatory; that it was bad.

5 I think the term I used was it's called "jigaboo" or
6 something like that, you know. And I remember that because I
7 was raised here. So I kind of from the '50's and '40s you
8 would see kind of those kind of cartoons and stuff like that,
9 which were very offensive, you know.

10 **Q.** And did you ever talk to Ramon Martinez about this cartoon
11 drawing?

12 **A.** No. No.

13 **Q.** And other than Mr. Diaz, to your knowledge, did anyone
14 else complain about this cartoon drawing to anyone, to your
15 knowledge?

16 **A.** No.

17 **Q.** And after Mr. Diaz's complaint, the cardboard and all that
18 was taken down and removed immediately?

19 **A.** I don't know what happened to it. I don't know if it was
20 moved and saved for a time. I don't know.

21 **Q.** Okay. But you understand it did become part of the
22 investigation; correct?

23 **A.** Yeah. You know, sure. People were looking at it, uh-huh.

24 **Q.** And to your knowledge, do you know if Mr. Martinez
25 received any type of discipline? Were you ever advised one way

1 or the other?

2 **A.** I don't remember ever being told directly. I think there
3 might have been like a rumor that he was written up or
4 something. I don't know.

5 **Q.** But as far as you're concerned, your part of this process,
6 once you reported it up and spoke to Wayne Jackson and Victor
7 Quintero, it was out of your hands?

8 **A.** Correct. I left it in their hands.

9 **Q.** At some point in time in, say, the February 2016 time
10 period, were you ever advised by Joyce DelaGrande about any
11 issues she had with -- the folks running the elevators?

12 **A.** Yes.

13 **Q.** What were those issues?

14 **A.** That product wasn't being moved; that sometimes they
15 couldn't find -- find the guys at the elevator, you know. And
16 I -- I also tried to explain to her, well, they have to take
17 their breaks, they have to take their lunches, you know, things
18 like that; but she said it was more than that, that they just
19 were never there sometimes. So that's her word. That's what
20 she was saying. Okay?

21 **Q.** At some point in time was Ms. DelaGrande asking you to
22 remove Mr. Diaz as the lead elevator operator?

23 **A.** I think there was an email sent that alluded to that, that
24 she wanted a change at the elevators.

25 **MS. KENNEDY:** Okay. Your Honor, I'd like to show

1 Exhibit 296. It has not been admitted so I'd mark it for
2 identification only.

3 And Exhibit 296, starting at Page 3 in particular, is an
4 email from Joyce DelaGrande to Edward Romero dated
5 February 19th, 2016, at 12:49 a.m.

6 (Trial Exhibit 296 marked for identification)

7 **BY MS. KENNEDY:**

8 **Q.** If you look at that last page of Exhibit 296, Mr. Romero,
9 it's an email string. Read through it and let me know when
10 you're done.

11 **A.** It's marked 12:49? I mean, the time?

12 **Q.** Yes. 12:49 a.m. It's going to be on Page 3 of that
13 Exhibit 296.

14 **A.** Yes, I see it.

15 **Q.** Take a minute to read that and let me know when you're
16 done.

17 (Witness complied.)

18 **A.** Okay.

19 **Q.** And is that your email to Ms. DelaGrande?

20 **A.** This is a copy she sent to me, right?

21 **Q.** Yes. Could you start on Page 3? It's an email from
22 you -- I'm sorry, from Ms. DelaGrande to you. Excuse me, yes.

23 **A.** Yeah, and my response -- I was trying to get a good handle
24 about what is --

25 **THE COURT:** Hang on. Hang on. Let's get the -- deal

1 with the document first.

2 **MS. KENNEDY:** Yes.

3 **BY MS. KENNEDY**

4 **Q.** Exhibit 296, Page 3, it should be the email from
5 Joyce DelaGrande to you. Do you recognize that, February 19th,
6 2016, at 12:49 a.m.?

7 **A.** Yes.

8 **Q.** Okay. And if you go to the prior page, 296.2 it's your
9 email to Ms. DelaGrande on the same day, February 19th, 2016,
10 at 1:48 a.m. Do you see that?

11 **A.** Yes.

12 **Q.** And just to complete the document, if you look at the top
13 of that page of Exhibit 296 at Page 2, it's Ms. DelaGrande's
14 response email to you sent on February 19th, 2016, at
15 1:59 a.m.?

16 **A.** Yes.

17 **Q.** And if you go to the first page of Exhibit 296 at Page 1,
18 you see your response email -- I'm sorry. You forwarded an
19 email to Victor Quintero, the email string -- excuse me -- at
20 4:24 a.m.?

21 **A.** Yes.

22 **Q.** And then Mr. Quintero responds to your email again on the
23 same day at 7:26 a.m. Do you see that?

24 **A.** Yes.

25 **Q.** And the "Re" line appears to be "Elevator Team End of

1 Week." Do you see that?

2 **A.** Yes.

3 **Q.** Okay. And do you recall the content of these emails? You
4 might not recall these exact emails.

5 **A.** All of the emails?

6 **Q.** Yes. Do you recall this issue?

7 **A.** Yeah. Well, she had complained --

8 **THE COURT:** Just a second. The answer is "yes" or
9 "no." We're trying to get this. So go ahead.

10 **MS. KENNEDY:** Yes, Your Honor. I move to admit --

11 **THE COURT:** Here we go. Any objection?

12 **MR. ORGAN:** No objection, Your Honor.

13 **THE COURT:** It's admitted. All right.

14 (Trial Exhibit 296 received in evidence)

15 **MS. KENNEDY:** Thank you.

16 May I publish, Your Honor?

17 **THE COURT:** You may.

18 (Document displayed.)

19 **BY MS. KENNEDY**

20 **Q.** Let's start the last page of Exhibit 296 just so we can
21 get our bearings here.

22 This is the email from Joyce DelaGrande to you on
23 February 19th, 2016.

24 And just for reference, in that first sentence where it
25 says "PWT," does that refer to power train?

1 **A.** Yes. Uh-huh.

2 **Q.** And just so we're able to understand, what is the power
3 train, if you know?

4 **A.** Power train is a section of the facility where they
5 specifically handled certain -- certain types of materials and
6 equipment that goes in cars. I can't tell you what they are
7 exactly.

8 **MS. KENNEDY:** Stephanie, if you go to Exhibit 296 at
9 Page 2, Mr. Romero's email at 1:48 a.m. I just want to ask a
10 couple questions about that.

11 (Document displayed.)

12 **BY MS. KENNEDY**

13 **Q.** Take a look this email, Mr. Romero. Do you recall why you
14 sent this email at this time?

15 **A.** It was in response to her concerns.

16 And I mentioned earlier that I always try to be -- I
17 always wanted to be fair with my guys, and I just didn't want
18 somebody complaining. Okay? So I listed out some questions.
19 You know, be more specific. You know, what happened? You
20 know, what are the real concerns you have? And, you know, and
21 so on. And has it been going on for a time?

22 And I think I have -- like, there's five points there.

23 **Q.** Right. In looking at those five points, do you recall
24 ever having discussions with Joyce DelaGrande about any of
25 these five points that you made? Again, I know it was about

1 five and a half years ago, but do you recall?

2 **A.** I -- I do because I went down to her area. What I wanted
3 was for her staff to tell us exactly what's going on. Okay?

4 A lot of times I couldn't talk to anybody because
5 everybody was busy or, you know -- you know, taking care of
6 their activities and so on.

7 But I went down there, you know, a number of times. You
8 know, at least three times, you know. I'd tell her: What's
9 going on? Tell your guys to let me know exactly what's going
10 on so we could -- we could, you know, take care of this.

11 **Q.** Was it your understanding that Ms. DelaGrande had talked
12 to Owen and his team about these issues before she brought it
13 up to you?

14 **A.** That she had talked to her team?

15 **Q.** No. If she had talked to Mr. Owen Diaz's team and, you
16 know, his folks before she raised these issues with you?

17 **A.** I don't remember all the specifics, but I do remember,
18 like, her saying "My people are complaining about this. My
19 people are doing this."

20 I don't remember if she ever said that she spoke to him
21 directly. I don't -- I don't remember.

22 **Q.** All right. Well, let's take a look at the top of
23 Exhibit 296.2, the email from Ms. DelaGrande to you. It
24 actually goes to Page 1, but we'll stay on Page 2. This was
25 sent by Joyce DelaGrande at 1:59 a.m. It starts "Hi, Edward,"

1 at 296.2.

2 **A.** Yes.

3 **Q.** Look at that for a minute and let me know when you're
4 done. I wanted to ask you about the last couple of sentences
5 there and the comments regarding Mr. Diaz's -- Mr. Diaz and his
6 team.

7 (Witness complied.)

8 **A.** Okay.

9 **Q.** Okay. And taking a look at this top email from
10 Ms. DelaGrande, do you -- if you look in the middle paragraph
11 where it says, quote (as read) :

12 "I really brought it up because I had the same
13 concerns downstairs with Owen and his teams. They
14 would always tell me it was because of what they were
15 doing with the PWT material; but if they were
16 struggling up here, too, and the beginning of the week
17 team does not, then I think it may be the team. I
18 personally brought these concerns to the team
19 tonight."

20 Do you see that?

21 **A.** Yes.

22 **Q.** Does that refresh your recollection as to whether or not
23 you knew at the time that Joyce DelaGrande talked to the team
24 about these issues?

25 **A.** Well, you know, I asked her -- in my response first to her

1 I wanted to get as much details as I could, so I guess she was
2 responding on what she had done.

3 In all honesty, until I see this email, I don't remember
4 her saying that, you know; but according to the email, it
5 sounds like she did talk to Owen about it, yeah.

6 **Q.** And do you recall if you actually talked to Mr. Diaz about
7 these issues?

8 **A.** I think we did, yeah. You know, I usually told the guys:
9 I got -- I got this concern. They're saying this. They're
10 saying that. And I tried to let them tell me what they felt
11 was going on.

12 **Q.** All right. Let's go to the first page of
13 Exhibit 196 [sic] and the email that you sent, Mr. Romero, to
14 Victor Quintero at 4:24 a.m.

15 **A.** Uh-huh.

16 **Q.** It's the one in the middle.

17 (Document displayed.)

18 **Q.** And take a look that and let me know when you're done,
19 sir.

20 **A.** Okay.

21 **Q.** And looking at this email at 4:24 a.m., do you recall this
22 email now?

23 **A.** Yes.

24 **Q.** And do you recall having any conversations with Mr. Diaz
25 regarding these issues?

1 **A.** Umm, I can't remember the details of, you know, going to
2 him and exactly the -- the exact words that were used, but I
3 did convey the concerns that they had.

4 **Q.** And when you spoke to Mr. Diaz, he was willing and open to
5 hear, I guess, the feedback and was willing to make changes; is
6 that right?

7 **A.** Umm, from what I can recall, and it's vague now, but I --
8 I kind of remember him, you know, trying to give some excuses:
9 Well, this and that and whatever.

10 And I was emphasizing we need to have good -- good help
11 with production to move these materials around, you know, up
12 and down and so on, and it's urgent that we provide the
13 service.

14 **Q.** And in talking with Mr. Diaz -- and I think you said
15 earlier you want to sort of protect your team -- were you
16 trying to make sure you were going to protect Mr. Diaz sort of
17 in this issue concerning production and Joyce DelaGrande?

18 **A.** Well, the issue with Ms. DelaGrande and her people, I
19 was -- I -- I made it a point to try to go slow. I didn't want
20 to jump to any conclusions. And I -- I really did want to hear
21 from my guys, and -- and I -- I didn't want to jump to
22 conclusions just because somebody complained.

23 **Q.** Correct.

24 **A.** Okay? I want to hear both sides of it. But sometimes in
25 these types of issues, you have a lot of complaints from a lot

1 of different people, well, it's a factor. You have to think
2 about: Well, you know, what's going on here? It's not one
3 person complaining, it's a number of people complaining.

4 So that's why I wanted to go slow and ask as many
5 questions as I could.

6 **Q.** And in your opinion, at this time you thought Mr. Diaz was
7 doing a pretty good job as an elevator -- lead elevator
8 operator; would that be accurate?

9 **A.** Umm, I -- I think Owen had -- has the capability of being,
10 you know -- you know, assuming responsibilities and so on, but
11 I think there were probably issues there that I didn't know
12 about. You know, his relationships with other people I don't
13 know.

14 But I liked Owen. You know, I didn't want to see anything
15 happen to him, you know. But when you get this number of
16 complaints, well, then you have to take it serious.

17 **Q.** Well, in these conversations you had with Mr. Diaz, say,
18 in February of 2016 when you were talking to him about these
19 complaints, did he tell you at that point in time that, you
20 know, everyone is calling him the "N" word and all these other
21 racial slurs and that's why these -- that's why I'm not getting
22 along with these people? Did he ever tell you that at all?

23 **A.** No. I would have reported that if he would have said
24 that.

25 **Q.** At some point in time were you advised that a decision had

1 been made that Mr. Diaz was no longer going to be the lead
2 elevator operator?

3 **A.** Yeah. All of this information was being relayed to Wayne
4 Jackson. Okay? And I think he was the one that took care of
5 the write-up, right.

6 **Q.** Did you know if Mr. Diaz actually got a write-up or was it
7 just something discussed?

8 **A.** I don't know. I don't know if he did or not.

9 **Q.** But that was handled by Wayne Jackson, nextSource, those
10 folks; correct?

11 **A.** Right.

12 **Q.** You understand at some time Mr. Diaz advised you that he
13 had a passing in his family and he was going to be taking some
14 time off?

15 **A.** Yes.

16 **Q.** And he advised you of that sometime in March of 2016; is
17 that your recollection?

18 **A.** If I remember right, I think there was an email or
19 something he sent that said: I'm going to be off because my
20 mother had passed away.

21 His mother had passed away a few days before that from
22 what I remember.

23 **Q.** Right. And after that email or that time period he told
24 you he was going to be gone, did you ever see Mr. Diaz again?

25 **A.** No.

1 **Q.** When the decision was conveyed to you that Mr. Diaz was
2 going to be made an elevator operator instead of a lead, did
3 you have any communications with Mr. Diaz about that?

4 **A.** Directly with Owen?

5 **Q.** Yes.

6 **A.** I don't think so.

7 **Q.** Did you ever try to call him at any time and let him know
8 that the decision had been made?

9 **A.** I don't -- I don't think so, but I can't recall that
10 happening.

11 **Q.** Let's go to Exhibit 306, please.

12 **MS. KENNEDY:** And, Your Honor, 306 has been stipulated
13 to.

14 **THE COURT:** All right. It's admitted.

15 (Trial Exhibit 306 received in evidence)

16 (Document displayed.)

17 **BY MS. KENNEDY**

18 **Q.** And, Mr. Romero, this is an email from you to Wayne
19 Jackson, copy Victor Quintero. There's a couple emails here.
20 The first one on Page 1 is March 11th, 2016. Take a minute to
21 read this and let me know when you're done.

22 (Witness complied.)

23 **A.** Okay.

24 **Q.** And if you go to Page 2 of Exhibit 306 -- we'll put these
25 in order -- Page 2 is an email from you March 10th to Wayne

1 Jackson and then Edward Romero email to Wayne Jackson on
2 March 14th. Sorry these are a little out of order the way
3 these strings came out.

4 **A.** You're referring to the email of March 10th, 10:57?

5 **Q.** Yes.

6 **A.** Okay.

7 **Q.** And taking a look at these, do you know who made the
8 decision that Mr. Diaz was no longer going to have the lead
9 elevator operator role?

10 **A.** I don't recall how that decision was made.

11 **Q.** And if you take a look at your email on Exhibit 306,
12 Page 2, on March 14th, 2016, you write (as read) :

13 "Wayne, I need to get this issue resolved
14 regarding Owen Diaz. Were you able to speak to Owen
15 last Friday? If not, let's resolve this issue today.
16 Let me know when you are available."

17 **A.** Right.

18 **Q.** In looking at that, do you know if anyone actually tried
19 to contact Mr. Diaz about this issue?

20 **A.** I don't recall anybody telling me that they had made
21 contact with him.

22 **Q.** All right. We've got one more exhibit here, and we'll go
23 to Exhibit 308, please, and marked for identification only. It
24 has not been admitted.

25 (Trial Exhibit 308 marked for identification)

1 **BY MS. KENNEDY:**

2 **Q.** For identification it's the Edward Romero email to Wayne
3 Jackson on March 17, 2006, at 6:18 a.m.

4 Take a look at that, Mr. Romero, and let me know when
5 you're done.

6 (Witness complied.)

7 **A.** Okay.

8 **Q.** And take a look the second page. Again, for
9 identification it's an email string between Edward Romero and
10 Wayne Jackson and Victor Quintero, March 16, 2016, email from
11 Edward Romero to Wayne Jackson at 11:18 p.m., and an email from
12 Edward Romero to Victor Quintero on March 17, 2016, at
13 6:24 a.m.

14 Do you recognize those emails, Mr. Romero?

15 **A.** Yes.

16 **Q.** And are these emails that you sent either to Victor
17 Quintero and/or Wayne Jackson?

18 **A.** Yeah.

19 **MS. KENNEDY:** Your Honor, I move to admit Exhibit 308.

20 **THE COURT:** Any objection?

21 **MR. ORGAN:** No, Your Honor.

22 **THE COURT:** They're admitted.

23 (Trial Exhibit 308 received in evidence)

24 **BY MS. KENNEDY:**

25 **Q.** Mr. Romero, let's start in chronological order. Let's go

1 to Exhibit 308, Page 2, and the email at March 16 to Wayne
2 Jackson where you write (as read) :

3 "Hi, Wayne. Owen Diaz was to inform us by this
4 evening if he was to accept the position as elevator
5 operator on the day shift. He never responded and he
6 said he would. Because of that, I had to make other
7 arrangements to cover the elevators."

8 Does that refresh your recollection as to the timing of
9 all this?

10 **A.** I remember that we were waiting for his response, but I
11 don't remember now his -- his -- who talked to him about being
12 a -- you know, not the lead, but a material handler or elevator
13 operator. Okay?

14 **Q.** All right. And we have one last exhibit, Mr. Romero. We
15 go to Exhibit 312.

16 **MS. KENNEDY:** Exhibit 312 has not been admitted.
17 Let's mark it for identification only.

18 (Trial Exhibit 312 marked for identification)

19 **BY MS. KENNEDY:**

20 **Q.** And Exhibit 312 is an email from Wayne Jackson to -- it's
21 like Fremont Control, Edward Romero, the subject is "Badge
22 Deactivation for Owen Diaz." It's on Exhibit 312, Page 1.

23 **A.** Uh-huh.

24 **Q.** Do you see that email from Wayne Jackson at nextSource?

25 **A.** Yes.

1 **Q.** Okay. Take a minute to read that and let me know when
2 you're done.

3 **A.** Okay.

4 **Q.** Is this an email that you received?

5 **A.** I remember they stated that his badge was being
6 deactivated.

7 **MS. KENNEDY:** Your Honor, I move to admit Exhibit 312.

8 **THE COURT:** Any objection?

9 **MR. ORGAN:** Objection 403, Your Honor, and foundation.

10 **THE COURT:** Overruled. You may proceed. It's
11 admitted.

12 (Trial Exhibit 312 received in evidence).

13 **MS. KENNEDY:** May I publish, Your Honor?

14 **THE COURT:** You may.

15 **MS. KENNEDY:** Thank you.

16 (Document displayed.)

17 **BY MS. KENNEDY**

18 **Q.** So this is an email basically notifying you and some
19 other -- I guess Fremont Control Room that Mr. Diaz's badge was
20 deactivated as of March 18, 2016.

21 **A.** Right.

22 **Q.** And it says here from Wayne Jackson (as read):

23 "He is not eligible to return under nextSource."

24 Do you know what that means at all? Any idea?

25 **A.** Well, he was a contract employee. So any contract

1 employee they had to deactivate because it's their employee.

2 I think that Tesla -- Tesla would probably deactivate if
3 it was something really, really outrageous or they thought, you
4 know, to secure the facility or something, they didn't want to
5 let somebody in, but that's another issue.

6 **Q.** But that wasn't an issue with Mr. Diaz, was it?

7 **A.** No. I guess they just told him -- I don't know what they
8 told him.

9 **MS. KENNEDY:** Okay. Thank you, Your Honor. I have no
10 more questions.

11 **THE COURT:** All right. Mr. Organ.

12 **MR. ORGAN:** Thank you, Your Honor.

13 **REDIRECT EXAMINATION**

14 **BY MR. ORGAN**

15 **Q.** Good morning, Mr. Romero. How are you doing?

16 **A.** Fine. Thank you.

17 **Q.** Let me ask you this: If you could, go to 306 --

18 **A.** Okay.

19 **Q.** -- which we were just looking at.

20 And if you look at 306, the second page of that has an
21 email from you dated March 10th at 10:57. Do you see that? It
22 says (as read) :

23 "Wayne, as you know, we will be replacing our
24 night shift elevator lead."

25 And then it has another --

1 **MR. ORGAN:** If you can... Are we publishing this?

2 **THE COURT:** You certainly should be or could be.

3 **MR. ORGAN:** Okay.

4 (Document displayed.)

5 **BY MR. ORGAN**

6 **Q.** And then, if you could -- now, just if you look at this,
7 you sent this on -- this is the first page. Do you see that?
8 It says it's sent on -- are you looking at the first page of
9 306?

10 **A.** Oh.

11 **Q.** It says it's sent on March 11th at 6:57:06 a.m.; right?

12 **A.** Yes.

13 **Q.** Now, if you go to the second page, down at the bottom, 306
14 second page, and look at where you send it. Down at the bottom
15 there it says March 10th, 10:57 p.m.

16 That's the same email, isn't it, sent at different times
17 on different dates? Do you have any explanation?

18 **A.** No. I have no idea how that happened.

19 **Q.** Okay. But we don't know which one is the truth; right?

20 **MS. KENNEDY:** Objection. Argumentative.

21 **THE COURT:** Sustained.

22 **BY MR. ORGAN**

23 **Q.** Let's go to Exhibit 308.

24 (Document displayed.)

25 **Q.** And if you look at the first page of 308, that says

1 March 17th at 6:18; right?

2 **A.** Yes.

3 **Q.** The same exact email says March -- go to the second page
4 down at the bottom.

5 The second page says March 16th at 11:18. Do you have any
6 idea why that email also has two different dates and times?

7 **A.** I don't have -- I don't have any idea at all.

8 **Q.** Okay.

9 **A.** Yeah.

10 **Q.** Let me ask you this: You were talking about the
11 picaninny, and you said --

12 **A.** I didn't hear what you said.

13 **Q.** I'm sorry. You were talking about the picaninny, and when
14 you were testifying about it just now, you --

15 **A.** I'm sorry. There is one word I didn't catch.

16 **Q.** Oh, I'm sorry. Yeah.

17 You were talking about the picaninny a little earlier when
18 you were testifying for Tesla. Do you remember that?

19 **A.** Are you talking about the drawing?

20 **Q.** Yeah, the drawing.

21 **A.** Yeah. I think the word that I used was --

22 **Q.** "Jigaboo"?

23 **A.** Yeah, right.

24 **Q.** And you testified, though, that when you saw the
25 picture -- and when you saw the picture that you were shocked

1 that someone would do that. I have that right; right?

2 **A.** Yes. I mean, everybody shows shock in a different way. I
3 felt shocked when I saw that.

4 **Q.** Well, you were asked about that in your deposition. Do
5 you remember?

6 **A.** No.

7 **Q.** (As read) :

8 **"QUESTION:** Isn't it true, sir, that when" --

9 **THE COURT:** Where are you reading from? I'm sorry,
10 Mr. Organ.

11 **MR. ORGAN:** I'm sorry?

12 **THE COURT:** What page and line are you reading from?

13 **MR. ORGAN:** 115, Your Honor, Line 23 to 116, Line 1.

14 **THE COURT:** Okay. Why don't you let Mr. Romero have a
15 look at that.

16 **THE WITNESS:** 115? Page 115?

17 **BY MR. ORGAN**

18 **Q.** Yeah. 115, Line 23.

19 **A.** Give me the page number again.

20 **Q.** Page 115, Line 23.

21 **A.** Okay.

22 **MR. ORGAN:** May I read that, Your Honor?

23 **THE COURT:** Mr. Romero, are you there? Have you read
24 that.

25 **THE WITNESS:** Yes, I see it.

1 **THE COURT:** Yes, go ahead.

2 **BY MR. ORGAN**

3 **Q.** (As read) :

4 **"QUESTION:** When you saw the picture of the drawing,
5 did you think it was a joke?

6 **"ANSWER:** I had no way of knowing if it was a joke.
7 It was just a picture."

8 So when I asked you about that, you didn't tell me you
9 were shocked; right?

10 **MS. KENNEDY:** Objection. Argumentative.

11 **THE COURT:** Overruled. You can answer.

12 **THE WITNESS:** Okay. I -- can you ask me again,
13 please? I didn't hear the whole question.

14 **BY MR. ORGAN**

15 **Q.** When I asked you about that in your deposition when you
16 were under oath --

17 **A.** Yes.

18 **Q.** -- the same as you are here, you didn't say you were
19 shocked; correct?

20 **A.** I think the question says if I thought it was a joke.

21 **Q.** Right.

22 **A.** Okay? So I was answering if -- you know, the question if
23 it was a joke. And I said I didn't know if it was a joke.

24 **Q.** It was just a picture, sir. That's what you told me;
25 right?

1 **A.** That's -- if that's what it says there.

2 **Q.** You didn't tell me it was a shocking thing; right?

3 **A.** I did not. Okay?

4 **Q.** I then asked you what you thought the "booo" meant. Do
5 you remember what you thought the "booo" meant underneath the
6 picture?

7 Do you remember the picture?

8 **THE COURT:** Would you ask one question at a time,
9 Mr. Organ?

10 **MR. ORGAN:** I apologize, Your Honor.

11 **THE COURT:** Okay. So which question would you like
12 him to answer?

13 **MR. ORGAN:** I think -- Your Honor, if I may, why don't
14 we show the witness Exhibit 33, the picture, so that we can
15 have it up. Would that be okay with Your Honor?

16 **THE COURT:** It's your examination. I just want it to
17 go forward smoothly.

18 **MR. ORGAN:** I apologize, Your Honor.

19 **THE COURT:** Okay.

20 **MR. ORGAN:** If you could pull up Exhibit 33 and the
21 picture.

22 And may we publish that, Your Honor? It's in evidence.

23 **THE COURT:** It's in evidence.

24 **MR. ORGAN:** Yeah.

25 (Photograph displayed)

1 BY MR. ORGAN

2 Q. Just so we're on the page same, this is the exhibit you
3 saw; right?

4 A. Yes.

5 Q. This is the picture Owen had complained about; right?

6 A. Yes.

7 Q. And what did you think the "booo" meant?

8 A. I don't remember what I said about that.

9 Q. Well, you testified a little earlier today when
10 Ms. Kennedy was asking you questions, you said: I thought it
11 was a common jigaboo. You know, cartoons when you were a kid.

12 Do you remember that testimony?

13 A. Yes.

14 Q. And then when I asked you this question in deposition
15 under oath, same as you were here --

16 MR. ORGAN: I'm looking at 116, Your Honor, 11 to 16.

17 (Pause in the proceedings.)

18 MR. ORGAN: Can I read that, Your Honor?

19 THE COURT: Yes.

20 BY MR. ORGAN

21 Q. (As read):

22 "QUESTION: What did you think the 'booo' meant?

23 "ANSWER: I had no way of knowing by looking at that
24 what the intent was. You know, what was the motive
25 behind it. I had no way of knowing."

1 **A.** You're referring to the portion that says "booo"?

2 **Q.** Yes.

3 **A.** Okay. My -- what I recall is the picture, you know, the
4 actual facial or head or whatever it is, okay, I recognize that
5 as a jigaboo. You're referring to "booo," and I remember -- I
6 don't remember if -- I don't remember thinking that "booo"
7 meant anything. I don't know if it was associated.

8 When I was a young boy and I saw that picture, it never
9 had "booo" underneath. It just had the jigaboo. So I knew
10 that was bad.

11 **Q.** Right. Because that picture, those cartoons when you were
12 a kid, were cartoons depicting black people in demeaning
13 conditions, correct, being chased?

14 **A.** Well, from where I was raised, it was not a good picture.
15 Okay?

16 **Q.** Let's go to -- oh, you said something. Ms. Kennedy asked
17 you a question about did you ever hear someone else calling
18 Owen Diaz the "N" word. Do you remember that testimony again?

19 **A.** Yes.

20 **Q.** Isn't it true, sir, Owen Diaz worked the night shift;
21 right?

22 **A.** Yes.

23 **Q.** And you worked the day shift; right?

24 **A.** Correct.

25 **Q.** So it would be highly unlikely for you to ever hear anyone

1 say anything to Mr. Diaz because you worked different shifts;
2 right, sir?

3 **A.** Well, and I think I testified that I never heard.

4 **Q.** Okay. If we could, go to Exhibit 296. This is the Joyce
5 DelaGrande.

6 **MR. ORGAN:** And can we publish this, Your Honor?

7 **THE COURT:** Sure.

8 (Document displayed.)

9 **BY MR. ORGAN**

10 **Q.** 296, if you look here, the first page -- yep.

11 And if you could hone in on the "To" and "From" on the
12 bottom there, Sabrina, please.

13 I notice that Robert Hurtado is copied on this email. Do
14 you see that, from Joyce DelaGrande to you?

15 **A.** Okay. There's --

16 **Q.** Bottom of Page 1, 296.

17 **A.** Okay. Yes, I see it.

18 **Q.** And Robert Hurtado was a supervisor working with Joyce
19 DelaGrande, correct?

20 **A.** I don't know what his title was.

21 **Q.** Okay. But Robert Hurtado -- you then, subsequently to
22 this, just a few days later, you got an email from Joyce
23 DelaGrande complaining that Owen Diaz would not talk to her
24 leads or her supervisors; correct?

25 **A.** Yes.

1 **Q.** And that caused her great frustration because Owen Diaz
2 says: I'm only going to talk to them about work.

3 That's what he said; right?

4 **A.** Correct.

5 **Q.** And you never asked Owen Diaz why he wasn't going to talk
6 to those people, did you?

7 **A.** I don't recall having a conversation with him, but it
8 doesn't mean that it didn't happen. I just don't recall that
9 conversation.

10 **MR. ORGAN:** No more questions, Your Honor. Thank you.

11 **THE COURT:** All right. Thank you.

12 Any redirect, Ms. Kennedy?

13 **MS. KENNEDY:** No more questions, Your Honor.

14 **THE COURT:** Okay. Mr. Romero, you can step down.

15 Thank you. You're excused.

16 **THE WITNESS:** Thank you.

17 (Witness excused.)

18 **THE COURT:** Who is next?

19 **MR. ALEXANDER:** Your Honor, we'll call as our next
20 witness Wayne Jackson.

21 **THE COURT:** All right.

22 WAYNE JACKSON,

23 called as a witness for the Plaintiff, having been duly sworn,
24 testified as follows:

25 **THE WITNESS:** Yes, ma'am.

1 **THE CLERK:** Be seated.

2 And if you would please state your full name for the
3 record and spell it for --

4 **THE WITNESS:** Sure. Wayne Jackson.

5 **THE CLERK:** And would you spell it for the court
6 reporter, please?

7 **THE WITNESS:** W-A-Y-N-E. J-A-C-K-S-O-N.

8 **THE COURT:** Mr. Alexander, go ahead.

9 **MR. ALEXANDER:** Thank you, Your Honor.

10 **DIRECT EXAMINATION**

11 **BY MR. ALEXANDER:**

12 **Q.** Good morning, Mr. Jackson.

13 **A.** Good morning.

14 **Q.** A little background. You attended Skyline High School in
15 the Oakland area; correct?

16 **A.** Yes.

17 **Q.** And you attended the University of Arizona, but didn't --
18 you didn't get a degree; correct?

19 **A.** Uh-huh.

20 **Q.** And then you served in the Armed Forces in the Marines; is
21 that correct?

22 **A.** Yes, sir.

23 **Q.** And that's the time frame from 1990 to 1994; right?

24 **A.** Yes, sir.

25 **THE COURT:** Excuse me. Can you pull the mic closer to

1 you so that we pick up everything?

2 **THE WITNESS:** Is that better? Okay.

3 **BY MR. ALEXANDER**

4 **Q.** And that's with an honorable discharge at an E4 corporal
5 level; correct?

6 **A.** Yes, sir.

7 **Q.** And you served in the Persian Gulf; correct?

8 **A.** Yes, sir.

9 **Q.** Thank you.

10 And for the record, you are African-American; correct?

11 **A.** Yes.

12 **Q.** At some point you were employed with nextSource; is that
13 right?

14 **A.** Yes.

15 **Q.** And during what time frame?

16 **A.** Oh, 2000 -- mid-2000s; 2014, '15 I believe it was.

17 **Q.** And part of your job at nextSource was to recruit
18 employees to work as contract employees inside of the Tesla
19 factory at Fremont; is that correct?

20 **A.** Not approve them, but I was kind of -- we were kind of the
21 middleman.

22 **Q.** And at some point you became a program manager at
23 nextSource performing functions associated with the Tesla
24 factory; correct?

25 **A.** Yes.

1 **Q.** And if I understand correctly, nextSource was
2 essentially a liaison between Tesla and staffing companies that
3 Tesla was using in order to stock its factory?

4 **A.** Yes. Like I say, we were kind of a middleman
5 organization. We were just the middleman.

6 **Q.** And the various staffing companies that were being used by
7 Tesla in order to stock its factory with contract employees was
8 CitiStaff; correct?

9 **A.** Yes. That was one of them.

10 **Q.** Chartwell?

11 **A.** Yes.

12 **Q.** West Valley Group?

13 **A.** Yes.

14 **Q.** Flagstaff?

15 **A.** Hmm, Manpower. I can't remember all. It was quite awhile
16 ago. I can't remember all the -- they had several agencies
17 that they contracted with.

18 **Q.** And you're familiar with a person by the name of Owen
19 Diaz; correct?

20 **A.** A little bit. Not a whole lot.

21 **Q.** He was an employee inside the workplace that you were
22 aware of?

23 **A.** Yes. He was -- I think it was either West Valley or
24 Manpower. I can't remember which company.

25 **Q.** And so nextSource didn't actually perform contract

1 services such as running the elevators or doing equipment or
2 anything like that. You were simply a facilitator to
3 essentially supervise the staffing companies; right?

4 **A.** Yes. Well, to, like I say, liaison between the staffing
5 companies and Tesla.

6 **Q.** And with regard to that function, nextSource did not
7 actually perform any human resource functions; is that correct?

8 **A.** No, sir.

9 **Q.** No, sir, it did not?

10 **A.** No, it did not.

11 **Q.** Thank you.

12 And so nextSource played no role in training the
13 contract employees in terms of duties; right?

14 **A.** No, sir. They were trained by Tesla.

15 **Q.** Now, with regard to the safety rules, all the employees --
16 all the contract employees that performed work inside the Tesla
17 factory had to complete a safety program, a safety rule
18 training; correct?

19 **A.** Yes. Tesla had us show them a video the first day.

20 **Q.** And so Tesla was the one that provided that safety
21 training; right?

22 **A.** Yes.

23 **Q.** Now, I would like to have you turn to Exhibit No. 29,
24 which has been marked but has not yet been received into
25 evidence.

1 **A.** Which binder do I go to? There's two here.
2 **Q.** Pick one and let's see if that's the one that has it.
3 **A.** This is 39. You said 29?
4 **Q.** There should be an Exhibit 29.

5 **THE COURT:** I think neither of these have 29.

6 **THE WITNESS:** Yeah. I don't have a 29. I see 39.

7 **MR. ALEXANDER:** Is it possible to display 29 for the
8 witness?

9 **THE COURT:** Is this showing to the jury at the moment?

10 **MR. ALEXANDER:** It's not, I don't believe.

11 **THE CLERK:** Not yet.

12 **THE COURT:** Okay. Good.

13 All right. Yes. So this is fine.

14 **BY MR. ALEXANDER**

15 **Q.** If you could look to the screen to your right, there is a
16 document displayed, Exhibit No. 29. It is the Tesla
17 Anti-Harassment Policy. Do you see that?

18 **A.** Yes, sir.

19 **Q.** Were you familiar with that policy during the time frame
20 that you were at Tesla working at nextSource?

21 **A.** Yes.

22 **Q.** And that policy, was that policy given to the contract
23 employees?

24 **MS. JENG:** Objection. Calls for speculation.

25 **THE COURT:** Do you want to lay a foundation for that?

1 Lay a foundation.

2 **BY MR. ALEXANDER:**

3 Q. With regard to the training that was given to employees,
4 contract employees that were working at Tesla, did you have an
5 understanding as to what they received before they were allowed
6 to work at Tesla?

7 A. I don't remember everything but, yeah, they had a packet
8 that we were to give them.

9 Q. Okay. And the packet that they were given, did that
10 packet include Exhibit No. 29?

11 A. I don't remember, but it quite possibly did. I would
12 believe so.

13 Q. So you don't know one way or another whether they received
14 this document, but you believe that they did?

15 A. I believe they did. I just -- like I said, it's been
16 quite awhile. It's been four or five years so I can't remember
17 all that.

18 Q. And with regard to Exhibit No. 6, which also has not
19 been -- I'm sorry.

20 With regard to Exhibit No. 29, you said that you were
21 familiar with that document?

22 A. It looks familiar, yes.

23 **MR. ALEXANDER:** May it be received into evidence, Your
24 Honor?

25 **THE COURT:** Is there any objection to 29?

1 **MS. JENG:** I think there lacks foundation from this
2 witness.

3 **THE COURT:** I think that's true. So I'll sustain the
4 objection.

5 **MR. ALEXANDER:** Okay.

6 With regard to Tesla's Anti-Handbook Handbook, Exhibit
7 No. 6, which has not yet been received into evidence, but may
8 it be displayed so the witness can see it?

9 **THE COURT:** Sure.

10 **MR. ALEXANDER:** Your Honor, if I could, Exhibit
11 No. 368 is the same as Plaintiff's Exhibit No. 29, and the
12 defendant has stipulated to admission of that document.

13 **THE COURT:** Okay. That's why I told you to get these
14 numbers straight so that we didn't have duplicates.

15 Would you like to confirm that that's the case so that
16 this document can be admitted into evidence?

17 (Brief pause.)

18 **THE COURT:** I'm going to accept the representation of
19 the plaintiffs with respect to this document, and it will be
20 admitted.

21 (Trial Exhibit 368 received in evidence)

22 **THE COURT:** So go ahead, Mr. Alexander.

23 **MR. ALEXANDER:** Thank you, Your Honor.

24 **BY MR. ALEXANDER**

25 **Q.** With regard to Exhibit 6, the Anti-Handbook Handbook that

1 is on your screen, during the time frame that you were at
2 nextSource working for Tesla, did you have familiarity with
3 that document?

4 **A.** I don't recall this particular document.

5 **Q.** So the Anti-Handbook Handbook, you had never seen it while
6 performing services for Tesla; correct?

7 **A.** I can't say I've never seen it. I'm just saying I don't
8 remember this particular document.

9 **Q.** Okay.

10 **A.** I could very well have seen it, but I just don't remember.
11 There was a packet that we gave them so they could have very
12 well been in there.

13 **Q.** And with regard to Exhibit No. 6, when you say it very
14 well could have been in there, you don't know for a fact
15 whether the Anti-Handbook Handbook was actually provided to
16 contract employees; is that correct?

17 **A.** Yes, I don't recall.

18 **MR. ORGAN:** May we publish -- you wanted to publish
19 the --

20 **MR. ALEXANDER:** Not 6. He doesn't remember.

21 **MR. ORGAN:** Okay. Fair enough.

22 **BY MR. ALEXANDER**

23 **Q.** Now, with regard to use of the "N" word inside the
24 workplace, you heard the "N" word -- and you understand what I
25 mean, by the "N" word I hope -- used inside the Tesla factory;

1 is that correct?

2 **MS. JENG:** Objection. Motion in Limine.

3 **THE COURT:** Could you use a point in time? Reference
4 the time period that this was used; in other words, during the
5 time that Mr. Diaz was employed in the factory.

6 **MS. JENG:** Your Honor, if I could --

7 **BY MR. ALEXANDER**

8 **Q.** During the --

9 **THE COURT:** Hang on just a second.

10 Ms. Jeng?

11 **MS. JENG:** Could I just direct your attention to
12 Page 7, Lines 15 to 23, of your order?

13 **MR. ALEXANDER:** Your Honor, may I simply rephrase?

14 **THE COURT:** I'm sorry?

15 **MR. ALEXANDER:** I would simply like to rephrase the
16 question.

17 **THE COURT:** Let me just look at what Ms. Jeng is
18 referring me to.

19 (Pause in proceedings.)

20 **THE COURT:** I'm going to allow this general line as
21 long as you rephrase.

22 **MR. ALEXANDER:** Thank you, Your Honor.

23 **THE COURT:** Overruled.

24 **BY MR. ALEXANDER**

25 **Q.** During the time frame of 2015 to 2016, did you hear the

1 "N" word used inside the workplace at Tesla?

2 **A.** Yes, sir.

3 **Q.** And you heard it used quite a few times; right?

4 **A.** Yes, sir.

5 **Q.** And it would be fair to say that as you walked throughout
6 the factory, you heard it on a daily basis?

7 **A.** Yes, sir.

8 **Q.** And when you say "throughout the factory," that includes
9 the satellite cafeterias; right?

10 **A.** I wouldn't -- I wouldn't limit where it was said in the
11 factory. It was said quite often. Not always in a derogatory
12 manner. Sometimes as they would say "my," you know, like as in
13 friend, but it was inappropriate.

14 **Q.** So you heard n-i-g-g-e-r and you heard n-i-g-g-a --

15 **A.** Yes, sir.

16 **Q.** -- throughout the workplace?

17 **A.** Yes, sir.

18 **Q.** And you heard it used by both African-Americans and
19 non-African-Americans; isn't that correct?

20 **MS. JENG:** Objection. Leading.

21 **THE COURT:** Sustained.

22 **BY MR. ALEXANDER**

23 **Q.** At the point when you were performing services for Tesla,
24 you were performing services through nextSource; correct?

25 **A.** Yes, sir.

1 **Q.** And nextSource had a contract with Tesla to perform
2 services at Tesla's behest; is that correct?

3 **MS. JENG:** Objection. Calls for speculation.

4 **THE COURT:** Overruled. Either he knows that or not.

5 **THE WITNESS:** I was not involved in the contract
6 negotiations with Tesla so I'm not sure exactly what contracts
7 nextSource and Tesla had.

8 **BY MR. ALEXANDER**

9 **Q.** You understood that there was a contract between Tesla
10 and nextSource for nextSource to provide services to Tesla;
11 correct?

12 **A.** Yes, I believe so.

13 **Q.** And in your role at nextSource, you were performing
14 services based on direction given by Tesla; is that correct?

15 **A.** I was based on nextSource. I worked for nextSource.
16 I didn't work for Tesla.

17 **Q.** Okay. I understand that you didn't work for Tesla, but
18 isn't it correct that you performed duties at the direction of
19 Tesla?

20 **A.** Yes.

21 **MS. JENG:** Objection. Leading.

22 **THE COURT:** Overruled. You can answer. And I think
23 you did. Was the answer "yes"?

24 **THE WITNESS:** Yes.

1 **BY MR. ALEXANDER**

2 **Q.** And so on occasion when you walked through the factory and
3 you heard the "N" word, you mentioned to someone that that
4 wasn't appropriate; right?

5 **A.** Yes.

6 **Q.** Okay. But most of the time you simply ignored it; right?

7 **A.** Yes.

8 **Q.** And were you offended by use of the "N" word inside the
9 Tesla workplace?

10 **A.** Yes, I was.

11 **Q.** And would it be fair to say that you didn't feel that you
12 had the power to stop the conduct inside the workplace?

13 **A.** They did not work for me, sir. I couldn't -- I had no
14 supervisory skills or anything over those individuals.

15 **Q.** So even though you were at nextSource and you were
16 supervising the staffing companies that were working as
17 contract employees inside the Tesla workplace, you did not feel
18 you had the power to stop the use of the "N" word inside the
19 workplace; correct?

20 **A.** I could not. They were not my employees.

21 **Q.** Okay.

22 **A.** It was not my place to advise them or direct them.

23 **Q.** Did you report your hearing of the "N" word to Tesla human
24 resources?

25 **A.** No, I did not.

1 **Q.** Did you report it to nextSource?

2 **A.** I mentioned it to my boss before, yes.

3 **Q.** Okay. On more than one occasion?

4 **A.** Yes. To be very honest, I don't know how it is now; but
5 when I was at Tesla, it was very cliquey. And what I mean is
6 it was almost like a high school-environment where different
7 groups hung out together.

8 **Q.** And how did that impact your ability to complain about use
9 of the "N" word?

10 **A.** A lot of times it was the context of the use of the word.
11 I'm not a fan of the word, but I understand younger people and
12 how they utilize it sometimes.

13 **Q.** But you also understood that the "N" word should not be
14 used inside the workplace; correct?

15 **A.** Yes, sir. I don't use it in the workplace so I would
16 expect others not to.

17 **Q.** So your function as a nextSource program manager was to
18 alert Tesla of complaints of harassment or discrimination; is
19 that correct?

20 **A.** Yes. If I knew of them, yes.

21 **Q.** And it was your understanding that it was up to each
22 staffing company to perform discipline if the staffing company
23 thought that discipline was appropriate?

24 **A.** Yes, sir. I was not in a position to discipline anyone.
25 They were not my employees.

1 **Q.** But in terms of addressing some action that required
2 discipline, what you would do is provide a recommendation as to
3 what you thought would be the appropriate discipline; correct?

4 **A.** Once again, I couldn't discipline them because they
5 weren't my employees. I could tell them what the situation
6 was, and it was up to them to determine any disciplinary
7 action.

8 **Q.** And when you say you could tell "them," you're referring
9 to the staffing company?

10 **A.** Yes.

11 **Q.** Now, it was your understanding that Owen Diaz was a
12 contract employee working through CitiStaff?

13 **A.** I don't know what agency he was with. Unfortunately, I
14 don't remember. We had a lot of contractors.

15 If I saw Owen Diaz today, I probably would wouldn't know
16 who he is, to be very honest.

17 **Q.** Well, do you recall that he was an elevator operator?

18 **A.** That's quite possibly the case, yes.

19 **Q.** And do you recall that the elevator operators were hired
20 through the staffing company that was CitiStaff?

21 **A.** It could be CitiStaff. It could have been any of several
22 agencies that they worked with.

23 **Q.** And the elevator operators were required to be certified
24 as forklift operators; correct?

25 **A.** Yes, sir.

1 **Q.** Now, there was an incident that occurred involving
2 elevators and Ramon Martinez and Owen Diaz. Do you recall the
3 incident I'm referring to?

4 **A.** I believe so, yes. I don't remember details but, yeah.

5 **Q.** I'm going to hope to help you with that.

6 With regard to that first incident -- I apologize.

7 Before we get to there, if you could turn to Exhibit
8 No. 73. It should be in one of those notebooks.

9 **MR. ORGAN:** He's in the wrong binder. He's got
10 Romero's binder. It's the white binder.

11 **BY MR. ALEXANDER:**

12 **Q.** Try the white binder.

13 **A.** There. 73.

14 **Q.** With regard to Exhibit No. 73, do you recognize this as an
15 email sent to you by Nancy Uhlenbrock on June 24th, 2015?

16 **A.** No. I don't really recall this email.

17 **Q.** Even though you don't recall it, do you recognize this as
18 being an email that was sent to you on this date?

19 **A.** I can see my name, but I don't recall this email.

20 **Q.** And do you recognize the person Nancy Uhlenbrock?

21 **A.** I believe she was the program manager prior to myself.

22 **Q.** At nextSource?

23 **A.** Yes. At this time I would have been a recruiter with
24 nextSource.

25 **Q.** And would it have been -- would it have been common for

1 the two of you to exchange emails during this time frame?

2 **A.** Not -- not common. Every once in a while, but not common,
3 no.

4 **Q.** And with regard to the information contained inside this
5 document, do you recall there being a discussion about Owen
6 Diaz with regards to the content?

7 **A.** I do not recall that, no.

8 **Q.** Now, with regard to this incident involving Mr. Diaz and
9 Mr. Romero, there was an investigation that was conducted
10 associated with this first incident; correct?

11 **A.** I believe so, yes.

12 **Q.** And as a result of the incident, both employees were
13 verbally counseled to play nice in the sandbox; correct?

14 **A.** Yes. I -- I'm trying to remember. I think they had
15 gotten into an argument or a disagreement.

16 **THE COURT:** You need to speak up.

17 **MS. JENG:** Objection. Objection. Leading.

18 **THE COURT:** Well, it's overruled.

19 And bring the mic close to you so that we can hear.

20 Go ahead.

21 **THE WITNESS:** I believe they had gotten into a
22 disagreement or an argument or something to that effect. I
23 don't remember all the details.

24 **BY MR. ALEXANDER**

25 **Q.** And is it correct that the reason why both of them were

1 given a verbal warning is because it was a he-said/she-said
2 situation where you couldn't tell which version of the facts
3 was true?

4 **A.** I really don't recall all the details. Like I said, I
5 think it was just a verbal altercation, and I don't recall all
6 the details unfortunately.

7 **Q.** And if I could have you turn to Page 101, Lines 15 through
8 25, perhaps that will assist you in refreshing your
9 recollection.

10 **A.** I don't see 101.

11 **Q.** The deposition transcript that you picked up with your
12 left hand, that is a copy of your transcript.

13 **A.** I still don't see a 101. It starts at 126.

14 Oh. Page 101, okay.

15 (Brief pause.)

16 **Q.** Have you had an opportunity to review your transcript?

17 **A.** Yes.

18 **Q.** I'm sorry?

19 **A.** Yes.

20 **Q.** And does that refresh your recollection as to why you
21 reached the conclusion that there was no substantiation?

22 **A.** Yeah. I believe there were no witnesses. It was just
23 the -- the two of them. Like I say, they said they got into a
24 verbal altercation, but there were no witnesses to the actual
25 altercation.

1 **Q.** And now if we could turn to Exhibit No. 92.

2 **A.** Is that Page 92?

3 **Q.** No. That's for --

4 **MR. ALEXANDER:** Back in the white, for the Court's
5 benefit.

6 **A.** Oh, okay.

7 **BY MR. ALEXANDER**

8 **Q.** And inside of your notebook, you should see an Exhibit 92
9 there.

10 Exhibit 92 is an email from Owen Diaz to you regarding
11 this incident, subject matter "Ramon." Do you see that?

12 **A.** Yes.

13 **Q.** And the paragraph below that is a forward from Mr. Diaz to
14 Edward Romero that describes the incident, the first incident,
15 involving the elevator and Mr. Martinez; correct?

16 **A.** Yes.

17 **Q.** Okay. And this is a document that you received associated
18 with that incident; is that correct?

19 **A.** It must have been, yes.

20 **MR. ALEXANDER:** May Exhibit 92 be received into
21 evidence, Your Honor?

22 **THE COURT:** Any objection?

23 **MS. JENG:** No objections.

24 **THE COURT:** It's admitted.

25 (Trial Exhibit 92 received in evidence).

1 **MR. ALEXANDER:** And if we could publish, please.

2 **THE COURT:** Yes.

3 (Document displayed.)

4 **BY MR. ALEXANDER**

5 **Q.** Your indication is that this was unsubstantiated because
6 there were no witnesses to the incident.

7 If we could highlight the first line of this document?

8 It makes reference to a person named Rothaj Foster being
9 trained by Mr. Diaz inside of the elevator. Do you see that in
10 the first line?

11 **A.** Yes. I have no recollection of who Rothaj Foster is,
12 though.

13 **Q.** Okay.

14 **A.** If he was a Tesla employee, I don't know.

15 **Q.** With regard to there being no witnesses, in this instance
16 Rothaj Foster was not ever questioned about this incident in
17 order to confirm Mr. Diaz's version of events; is that correct?

18 **MS. JENG:** Objection. Leading.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** I don't recall if he was questioned or
21 not.

22 **BY MR. ALEXANDER**

23 **Q.** If we could go to the second-to-last sentence, inside this
24 document says (as read):

25 "You can check the surveillance system to confirm."

1 **A.** I had no access to check surveillance.

2 **Q.** With regard to the cameras -- I'm sorry.

3 With regard to the elevators, the elevators did have
4 surveillance cameras in them though; correct?

5 **A.** I believe so.

6 **Q.** Okay.

7 **A.** I don't know, though, for sure. Like I said, that was
8 Tesla's property. I didn't have access to cameras.

9 **Q.** Okay. Thank you for that.

10 That was Tesla's property, and you didn't have access to
11 the cameras so that you could review what was on them; correct?

12 **A.** Yes.

13 **Q.** And do you know who did have access?

14 **A.** Tesla.

15 **Q.** Tesla.

16 Mr. Romero, did he have access?

17 **A.** He probably did if he was a -- he wasn't a Tesla employee
18 at first, so I'm not sure when his conversion occurred.

19 Because he was initially with nextSource, and then he was
20 hired on with Tesla.

21 **Q.** And Mr. Quintero, the person that Mr. Romero reported to,
22 he had the ability to access those cameras; correct?

23 **A.** Yeah. I would believe so.

24 **Q.** And so with regard to confirming the version of the
25 incident that Mr. Diaz had, you did not have the ability to

1 look at the video to determine whether Mr. Diaz's version of
2 the truth -- version of the facts was true?

3 **A.** Yeah, I would only have that if Tesla gave it to me.

4 **Q.** And with regard to Mr. Foster, would you have had to rely
5 on Tesla to interview Mr. Foster to find out what happened in
6 terms of this incident?

7 **A.** One again, I don't recall who Mr. Foster is, if he was a
8 Tesla employee. He could have been with another contract
9 agency on-site. I don't know. I don't recall that individual.

10 **Q.** But the typical protocol anytime there was a serious
11 incident was to notify Tesla human resources about the
12 incident; correct?

13 **A.** Yes.

14 **Q.** So to the extent -- and that would have been your
15 practice. With regard to this incident, you would have
16 notified Tesla about it?

17 **A.** Uh-huh.

18 **Q.** Yes?

19 **A.** Yes.

20 **Q.** And so in this instance if there was a need to interview
21 Mr. Foster. If there was a need to review the surveillance
22 video, Tesla human resources had the ability to do so; correct?

23 **A.** I would believe so. I don't know what their protocol was,
24 especially since both Mr. Diaz and Mr. -- and -- not Romero,
25 Martinez were both contract employees. I don't know if that

1 was in there -- you know, if they were able to do that.

2 And I don't know who Rothaj Foster is or if he was a
3 contractor either.

4 Q. If I could show you Exhibit No. 74, which is being marked,
5 but not been received.

6 (Trial Exhibit 74 marked for identification)

7 Q. This is an email from you on October 19th.

8 A. Thank you.

9 Q. Do you recognize that as your email address and as an
10 email that would have been prepared by you associated with the
11 elevator incident?

12 A. Yes.

13 **MR. ALEXANDER:** Exhibit 74, may it be received into
14 evidence, Your Honor?

15 **THE COURT:** Any objection?

16 **MS. JENG:** No objection.

17 **THE COURT:** No objection?

18 **MS. JENG:** No objection.

19 **THE COURT:** Okay. It's admitted.

20 (Trial Exhibit 74 received in evidence)

21 **MR. ALEXANDER:** If that could be published?

22 (Document displayed.)

23 **BY MR. ALEXANDER:**

24 Q. Exhibit No. 103, could you review that document?

25 It makes a reference to Terri Garrett. Who is

1 Terri Garrett?

2 **A.** She was my director at nextSource.

3 **Q.** So she was a director at nextSource that you reported
4 to?

5 **A.** Yes.

6 **Q.** And Exhibit 103 is an email exchange, several email
7 exchanges, between you and Ms. Terri Garrett; is that correct?

8 **A.** Most likely, yes.

9 **MR. ALEXANDER:** May Exhibit No. 103 be received?

10 **THE COURT:** Any objection?

11 **MS. JENG:** No objection.

12 **THE COURT:** It's admitted.

13 (Trial Exhibit 103 received in evidence)

14 **BY MR. ALEXANDER:**

15 **Q.** If we could start at the bottom email, that is August --
16 I'm sorry, October 19, 2015. There's a question from Mr. Wayne
17 (as read):

18 "Did you receive this from me Friday?"

19 Do you see that, Mr. Jackson?

20 **A.** Receive what? I don't know what it's referring to. It
21 just says "receive." What was I in receipt of?

22 **Q.** Thank you.

23 And then if we go above that, on October 19 at 5:32, you
24 respond (as read):

25 "Yes. I'm actually on the phone now dealing with

1 the Owen and Ramon issue. The issue seems to be
2 related to this, and we really are going to have to do
3 some in-depth investigation."

4 Do you see that reference?

5 **A.** Yes.

6 **Q.** So at least as of this time at 5:32, your intention was to
7 do an in-depth investigation to try and find out with regard to
8 circumstances of this incident in the elevator; right?

9 **A.** Yes.

10 **Q.** Thank you.

11 And then at the top (as read):

12 "Thank you. We actually need to get their
13 statements (and any other witness statements) to Tesla
14 HR today."

15 Do you see that reference at the top?

16 **A.** Uh-huh. Yes.

17 **Q.** So at least as of October 20th, there was an urgency to
18 get statements from all the people associated with this
19 incident, the first incident, on the elevator; correct?

20 **A.** I don't know which case this was referring to at the time.
21 Was it the first incident or the second? I don't know. I
22 can't -- like I said, it's been quite a few years so I don't
23 remember.

24 **Q.** And now if I could have you look at Exhibit No. 31.

25 Do you have that document in front of you?

A. Yes.

Q. I don't. Give me a second.

(Brief pause.)

Q. With regard to Exhibit 31, in the middle of the page there is an email -- I'm sorry. There is -- on -- the October 20th, 2015 reference on this document, it says -- makes a reference to an email between you and Ms. Garrett making a further inquiry regarding this matter. Do you see that?

A. Yes.

Q. And this was an exchange and continuing with the investigation associated with the first elevator incident; right?

A. I don't recall. Once again, I'm not sure of the time frame. Was this the first incident or was this the second incident? I'm not sure.

Q. First incident.

A. Well, I would assume so then. I don't -- once again, I don't recall. It's been quite awhile.

MR. ALEXANDER: Exhibit No. 31, may it be received
dence?

THE COURT: Any objection to 31?

MS. KENNEDY: No objection, Your Honor.

THE COURT: All right. It's admitted.

(Trial Exhibit 31 received in evidence)

1 **BY MR. ALEXANDER:**

2 **Q.** And if we could show the bottom of Exhibit 31, there is a
3 question from Ms. Garrett:

4 "Why is Ed meeting with them?"

5 Do you see that reference?

6 **A.** Yes.

7 **Q.** And that would have been Ed Romero?

8 **A.** Yes.

9 **Q.** And above it says (as read) :

10 "He was instructed by Victor."

11 **A.** Yes.

12 **Q.** That would have been Victor Quintero?

13 **A.** Yes.

14 **Q.** And then she says -- if we could highlight the top -- this
15 is October 20, 7:41 p.m. (as read) :

16 "Can I ask for your help on the email chain below?

17 It looks like Victor is asking Ed Romero to get involved
18 in a temporary worker employee situation. My
19 recommendation is that Ed not be involved. Can you help
20 me sort this out? Two of the three workers have already
21 been interviewed. Please advise."

22 With regard to those two employees that had been
23 interviewed, do you know who those employees were?

24 **A.** No, sir.

25 **Q.** Okay. And did Ms. Garrett ever tell you why she wanted to

1 stop someone from interviewing people?

2 **A.** I don't recall. Like I said, I'm not sure if Ed was a
3 Tesla employee at that time or if he was still under
4 nextSource. I don't know. That would make the difference.

5 **Q.** And now if you could turn to Exhibit No. 76.

6 With regard to this document, it's an email between you
7 and Ms. Garrett on October 21, 2015. Do you see that?

8 **A.** Yes.

9 **Q.** And you recognize this as one of the emails exchange
10 associated with the first incident?

11 **A.** Yes.

12 **MR. ALEXANDER:** May Exhibit No. 76 be received?

13 **MS. JENG:** No objections.

14 **THE COURT:** It's admitted.

15 (Trial Exhibit 76 received in evidence)

16 **MR. ALEXANDER:** And if we could show just the top
17 portion?

18 (Document displayed)

19 **BY MR. ALEXANDER**

20 **Q.** I'm sorry. Let's start October 21, 10:47, from
21 Ms. Garrett to you confirming via this email that (as read):

22 "We agree we do not need to do any further formal
23 investigation with Ramon, Owen, or Rothaj."

24 **THE COURT:** I think you misread that. There was
25 nothing "further" about that. Why don't you start the question

1 again.

2 **MR. ALEXANDER:** I --

3 **THE COURT:** (As read) :

4 "Confirming via this email that we agree we do
5 not need to do any formal investigation with Ramon,
6 Owen, and Rothaj."

7 **MR. ALEXANDER:** Okay. Thank you, Your Honor.

8 **BY MR. ALEXANDER**

9 **Q.** Did Ms. Garrett ever explain to you why there was no need
10 to do a formal investigation?

11 **A.** No.

12 **Q.** And then if we could go to the top email, the one at
13 10:49 a.m. from you (as read) :

14 "Yes. I have spoken with all three and will be
15 speaking with Ramon and Owen again on Friday. I had a
16 conversation with Ed" --

17 That would be Ed Romero?

18 **A.** Yes.

19 **Q.** (As read) :

20 "-- at Victor's desk" --

21 That would be Victor Quintero?

22 **A.** Yes.

23 **Q.** (As read) :

24 "I had a conversation with Ed at Victor's desk
25 yesterday, and they just want us to verbally counsel

1 each of them with regards to appropriate behavior in
2 the workplace. No written warning needed right now."

3 So you got direction from Mr. Quintero and Mr. Romero to
4 give a verbal warning to both of them without completing the
5 investigation; right?

6 **A.** It must be the case. And I probably sent it back to their
7 agencies to do it, to be honest.

8 **Q.** Thank you.

9 Let's talk about the second incident, the incident
10 involving the drawing that was made.

11 **MR. ALEXANDER:** If we could put up Exhibit No. 33 and
12 show the drawing.

13 (Photograph displayed.)

14 **BY MR. ALEXANDER:**

15 **Q.** With regard to this drawing, how did you receive this?

16 **A.** I believe Ed Romero sent me the pictures.

17 **Q.** And when you saw the picture, what did you think that
18 picture was?

19 **A.** Honestly, I was offended. It looks like what they used to
20 call a jigaboo, which was an old racially motivated cartoon
21 from the '50's and '60's, if I'm not mistaken, with the bone in
22 the hair and the big lips.

23 **Q.** And you were offended because you were African-American or
24 for some other reason?

25 **A.** Because I'm African-American.

1 **Q.** And this -- I think I got a fact wrong.

2 When you received this, were you inside the factory?

3 **A.** I don't remember. I would get calls and emails all days
4 and hours of the night, so...

5 **Q.** And did you meet with Mr. Diaz with regard to this
6 drawing?

7 **A.** I do believe so, yes.

8 **Q.** And when you met with him, did he indicate how he felt
9 about the drawing?

10 **A.** I believe -- I can't recall. I think he was offended as
11 well, but I don't remember specifics.

12 **Q.** Okay. Now, with regard to this second incident, the
13 incident involving the jigaboo, as you've referred to it, is it
14 correct there was to be an investigation with regard to the
15 jigaboo?

16 **A.** Yes.

17 **Q.** And typically the way it works inside of the Tesla factory
18 is the employees that are involved in an incident, the incident
19 is directed to the staffing company associated with that
20 employee; right?

21 **A.** Yes, sir.

22 **Q.** And so in this instance if it was Chartwell, the branch
23 manager would have been a person by the name of Veronica
24 Martinez; right?

25 **A.** Yes.

1 **Q.** And Veronica Martinez sent you statements which you
2 forwarded to Tesla and Terri Garrett; is that correct?

3 **A.** Yes, I believe so.

4 **Q.** And if we could turn to Exhibit No. 79. Do you recognize
5 this document as being --

6 **A.** I don't see a 79.

7 **THE COURT:** Neither of us have a 79.

8 Maybe this is a good -- is this a good time for the
9 morning break?

10 **MR. ALEXANDER:** Yes, it would be.

11 **THE COURT:** Okay. Great.

12 So, ladies and gentlemen, let's take our 15-minute break
13 and we will be back here at 10:15.

14 Please remember don't discuss this matter with anybody.

15 (Jury exits the courtroom at 10:00 a.m.)

16 (Proceedings were heard out of presence of the jury:)

17 **THE COURT:** Sit down for just a moment, please.

18 I asked this yesterday and I'm going to ask this again.

19 Please figure out where the duplicate documents are. You've
20 each put in different documents that are the same. You have
21 stipulations about some of the documents; and if one of you has
22 been organized enough to figure out where the duplicates are,
23 share that information with the other side. This is creating a
24 record that is difficult and it's wasting time.

25 (Whereupon there was a recess in the proceedings

1 from 10:01 a.m. until 10:22 a.m.)

2 (Proceedings were heard in the presence of the jury:)

3 **THE COURT:** All right. Please be seated everybody.

4 Mr. Alexander, please proceed.

5 **MR. ALEXANDER:** Thank you, Your Honor.

6 We initially started to discuss Exhibit No. 79. Instead
7 I'm going to be referring to Exhibit No. 287, which has been
8 stipulated to be admissible.

9 **THE COURT:** All right. It's admitted.

10 (Trial Exhibit 287 received in evidence)

11 **MR. ALEXANDER:** If we could display the first page of
12 this document.

13 **BY MR. ALEXANDER**

14 **Q.** There is a reference on January 25, 2016, at 1:26 p.m. of
15 an email from Veronica Martinez to Wayne Jackson.

16 **THE COURT:** 287 is in this.

17 **THE WITNESS:** In this?

18 **THE COURT:** He doesn't have it.

19 **MR. ALEXANDER:** If we could display 287? 287 has been
20 admitted. If we could display this onto the screen?

21 **THE COURT:** Ms. Davis, are we working on that?

22 **THE CLERK:** It should be...

23 **BY MR. ALEXANDER:**

24 **Q.** Let me -- while we're figuring that out, can you tell me,
25 Jackelin Delgado, who is she?

1 **A.** The name sounds familiar, but I don't remember. I don't
2 recall.

3 **Q.** Do you recall her being a Chartwell -- executive of
4 Chartwell, HR person?

5 **A.** She definitely could have been. I don't recall.

6 **Q.** And with regard to --

7 (Document displayed.)

8 **MR. ALEXANDER:** Thank you.

9 **BY MR. ALEXANDER**

10 **Q.** With regard to receiving statements, is it your
11 understanding that with regard to -- that on or about
12 January 25, 2015, Ms. Martinez forwarded the statements that
13 had been obtained from Mr. Diaz and Mr. Martinez with regard to
14 the jigaboo incident?

15 **A.** That could very -- I don't see anything on the screen, but
16 that could very well be the case. Because they weren't my
17 employees, so I would have to send the information back to the
18 agency for them to deal with.

19 **Q.** Now, with regard to this incident, did you have
20 discussion -- I'm sorry.

21 You were concerned about this incident involving Ramon
22 Martinez because this was the second incident involving
23 Mr. Diaz, correct?

24 **A.** I don't think it was because it was the second incident.
25 I think it was just my concerns were more so with the actions

1 of Mr. Martinez.

2 **Q.** If I could have you turn to page -- on your deposition
3 transcript, Page 101, Line 4 through 9.

4 **A.** You said Page 101?

5 **Q.** 101, Line 4 through 9.

6 Does that refresh your recollection that you were
7 concerned because with regard to this jigaboo incident, you had
8 previously had the October elevator incident?

9 **A.** Yeah. But, like I said, if I remember correctly, it was
10 more of the actions of Mr. Martinez this time that were more
11 concerning.

12 **Q.** And as a result of this incident, having this drawing
13 placed in the workplace by Mr. Martinez, you thought that he
14 should be fired; correct?

15 **A.** My personal would have been that; but, once again, he's
16 not my -- he was not my employee, so that was not my
17 determination to make.

18 **Q.** And you also communicated that to the director of
19 operations, Terri Garrett; correct?

20 **A.** Yes, sir.

21 **Q.** And you also had a conversation with Mr. Quintero, the
22 manager at Tesla, about this incident; right?

23 **A.** Yes, sir.

24 **Q.** And you discussed the drawing you and said -- you
25 communicated to Mr. Quintero that both you and Ms. Garrett

1 believed that Mr. Martinez should be terminated; right?

2 **A.** I don't believe -- like I said, once, again, I'm going to
3 reissue this statement. They were not my employees so I did
4 not have the right to fire anyone. I could make a
5 recommendation, but that is not -- it would not be up to me.
6 It would be up to their agency.

7 **Q.** And so that's what you did?

8 **A.** Yes.

9 **Q.** You made a recommendation --

10 **A.** Yes.

11 **Q.** -- to Mr. Quintero that Mr. Martinez be fired; right?

12 **A.** Yes, sir. Well, not fired, but that he be removed from
13 that contract. Maybe Chartwell or Manpower, whichever agency
14 he was with, they may have determined to move him to another
15 site. That was not my determination.

16 **Q.** And so Mr. Quintero, he did not want to discipline
17 Mr. Martinez; isn't that correct?

18 **A.** No, that was not correct. He did want to discipline
19 Mr. Martinez.

20 **Q.** He did not want him terminated?

21 **A.** I don't believe that was the case, no.

22 **Q.** Okay. Instead, Mr. Quintero wanted a stern warning to be
23 issued to Mr. Martinez; correct?

24 **A.** I don't recall. I believe that was the case, though.

25 **Q.** And Chartwell followed Mr. Quintero's recommendation to

1 suspend Mr. Martinez; isn't that correct?

2 **A.** I -- I don't know what the determining factors were for
3 Chartwell. They did their own HR stuff and they made their
4 determination. I don't know if it was based off of
5 Mr. Quintero or if it was based off of their policies. I don't
6 know.

7 **Q.** Isn't it correct that you told Mr. Quintero -- you
8 recommended to him that Mr. Martinez should at least be
9 suspended for three days as opposed to just a verbal warning;
10 right?

11 **A.** I definitely think there should have been some type of --
12 of disciplinary action; but, once again, that was not my
13 determination to make. I could only recommend, and they had to
14 make that determination.

15 **Q.** I am only talking about your recommendation.

16 **A.** Okay.

17 **Q.** When you spoke to Mr. Quintero, he wanted to give a
18 warning and you recommended that it needed to be something
19 stronger?

20 **A.** Yes, sir.

21 **Q.** A three-day suspension; right?

22 **A.** I don't know if I specifically said a three-day
23 suspension, but I did say that there should be additional
24 disciplinary action, yes.

25 **Q.** All right.

1 **A.** But, once again, that would be up to Manpower or Chartwell
2 or whichever agency he was with.

3 **Q.** But Mr. Quintero was making a determination as to what he
4 thought should occur; right?

5 **A.** As far as I --

6 **Q.** It wasn't your decision. It was his decision?

7 **A.** Yes. It was his department essentially so -- at Tesla.

8 **Q.** And so just to be clear, you were only giving a
9 recommendation, but it was definitely Mr. Quintero's choice as
10 to what was occurring; right?

11 **A.** No. It was the agency's choice overall. The final
12 determination would be with the agency that that individual was
13 with because that individual was their employee. He wasn't an
14 employee of Tesla. He wasn't an employee of nextSource. He
15 was an employee of that particular agency.

16 **Q.** With regard to the -- there are two statements that are
17 attached to Exhibit No. 287, a statement from Mr. Martinez and
18 the statement associated with Mr. Diaz.

19 If I understand correctly, you had not seen these
20 statements at the point when your deposition was taken in May
21 of 2019; correct?

22 **A.** That could very well be the case, yes.

23 **Q.** Now, with regard to the decision -- there was a decision
24 made to terminate Mr. Diaz. You had no involvement in that
25 decision; correct?

1 **A.** No, I did not. That is not my -- once again, that was not
2 my employee so I did not have the right to terminate.

3 **Q.** Ed Romero said that Tesla wanted Mr. Diaz not to be on
4 site anymore; isn't that correct?

5 **A.** I don't recall. That could be the case.

6 **Q.** If I could have you turn to Page 127, Line 11 through 22.

7 Does that help refresh your memory that Mr. Romero had
8 indicated that Tesla did not want Mr. Diaz on site anymore?

9 **A.** It says, well, basically Tesla was saying they just didn't
10 want. So I'm not sure if it was specifically Mr. Romero.

11 **Q.** Tesla decided they didn't want Mr. Diaz on site anymore?

12 **A.** Yes. I don't know who specifically may have said that at
13 that time. And, once again, like I said, it wasn't my
14 determination. They had to -- the agency determined if they
15 were going to terminate or transfer someone to another site.
16 That was up to them totally.

17 **Q.** And it's your understanding that Mr. Quintero was involved
18 in that decision based on Mr. Diaz being in Mr. Quintero's
19 area; correct?

20 **A.** Yes.

21 **Q.** If you could turn briefly to Exhibit No. 3. That is
22 the -- which has not been -- which is only being marked at this
23 time.

24 (Trial Exhibit 3 marked for identification)

1 **BY MR. ALEXANDER:**

2 **Q.** That's a Tesla Motors, Inc. Master Service Agreement.

3 At the time you were performing work at nextSource
4 associated with Tesla, did you have an opportunity to review
5 this document?

6 **MR. ALEXANDER:** I'm sorry. If we could display
7 Exhibit No. 3 on the witness's screen only?

8 **A.** This looks like it could be part of the packet that Tesla
9 gave us.

10 Once again, I don't remember the specific documents.
11 We're talking five years, six years ago; but they did give us a
12 packet with certain documents for employees to review -- or
13 contractors to review on their first day.

14 **BY MR. ALEXANDER:**

15 **Q.** Okay. And you believe this was one of those documents?

16 **A.** It could very well have been, yes, sir.

17 **MR. ALEXANDER:** May Exhibit No. 3 received?

18 **THE COURT:** Any objection?

19 **MS. JENG:** Yes. Lacks foundation as to this witness.

20 **THE COURT:** Can you get a little more specific with
21 this witness regarding the document?

22 **BY MR. ALEXANDER**

23 **Q.** With regard to this Master Service Agreement, you had an
24 understanding that there were agreements that existed between
25 Tesla and the staffing companies that were performing services

1 for it?

2 **A.** That, I don't know. Because, once again, I -- if I'm not
3 mistaken, the agreements were probably with nextSource and
4 the staffing company. I don't know if they were specifically
5 with Tesla and each staffing company.

6 **Q.** And if we could turn to the page that is 3-31. That is
7 approximately four pages from the last page.

8 Does this help refresh your memory of this document? It
9 has a signature for Tesla on September 24, 2015, and a
10 signature for nextSource by Edward Remus on September 29,
11 2015.

12 **A.** No, sir. I don't know who any of those individuals are.

13 **MR. ALEXANDER:** Thank you, Your Honor. I have nothing
14 further.

15 **THE COURT:** Ms. Jeng.

16 CROSS-EXAMINATION

17 **BY MS. JENG**

18 **Q.** Good morning.

19 **A.** Good morning.

20 **Q.** Mr. Jackson, you started working for nextSource in 2015
21 as a contract recruiter; correct?

22 **A.** Yes.

23 **Q.** Your job duties as a contract recruiter included
24 recruiting employees of staffing agencies to place with
25 nextSource clients; is that correct?

1 **A.** Not just staffing agencies but, yes.

2 **Q.** Okay. Your job was to recruit employees to place with
3 nextSource clients; is that correct?

4 **A.** Yes.

5 **Q.** Okay. What types of jobs did you recruit?

6 **A.** It was all levels of jobs throughout Tesla. Recycling,
7 line workers, just the whole gambit, to be quite honest.

8 **Q.** Okay. And did you recruit, for example, HVAC techs,
9 electricians, power washers?

10 **A.** Yes.

11 **Q.** Okay. Were those positions placed at Tesla?

12 **A.** Yes, they were.

13 **Q.** Were they placed elsewhere?

14 **A.** I don't recall.

15 **Q.** Okay. And you testified earlier you don't recall which
16 specific staffing agency Owen Diaz was employed by; is that
17 right?

18 **A.** Yeah. I don't recall if it was Chartwell, CitiStaff. I
19 think Manpower was one. We used several agencies.

20 **Q.** Okay. And that's because there are different staffing
21 agencies that nextSource recruited employees from?

22 **A.** Yes.

23 **Q.** For staffing agencies whose employees nextSource placed
24 at Tesla, is it your understanding that those staffing agencies
25 provided onboarding creating to their employees?

1 **MR. ALEXANDER:** Objection, Your Honor.

2 **THE COURT:** I'm sorry?

3 **MR. ALEXANDER:** Objection. Foundation.

4 **THE COURT:** You want --

5 **MR. ALEXANDER:** Objection. Foundation.

6 **THE COURT:** Third time makes the charm.

7 You want to lay a foundation, Ms. Jeng.

8 **MS. JENG:** Sure.

9 **BY MS. JENG**

10 **Q.** I believe you testified earlier that nextSource did not
11 do the training of the employees of staffing agencies that were
12 placed at Tesla; correct?

13 **A.** We did not do the specific training. Tesla did the actual
14 job duty training.

15 **Q.** Okay.

16 **A.** We would do the safety -- the initial first-day safety
17 review with them, but that was about it.

18 **Q.** All right. So Tesla did the safety training for the
19 contract workers that were placed at their factory; is that
20 right?

21 **A.** They gave us videos and such and documentation to share
22 with the contractors on their first day.

23 **Q.** Okay. And is it your understanding that when it came to,
24 for example, anti-harassment and discrimination policies, that
25 whichever staffing agency employed the employee would do that

1 training?

2 **A.** Yes.

3 **MR. ALEXANDER:** Objection. Speculation. Foundation.

4 **THE COURT:** Overruled.

5 **BY MS. JENG**

6 **Q.** You can answer, or do you need me to repeat the question?

7 **A.** Oh. I thought I answered it. I said yes.

8 **Q.** Oh, okay.

9 Okay. So your expectation was that the employees from the
10 staffing agencies would be trained by their employers on
11 anti-harassment or discrimination; is that right?

12 **A.** Yes. They would be trained by their employers and then
13 they would be given any rules or policies that Tesla had as
14 well.

15 **Q.** Okay. You testified previously about the Tesla
16 anti-harassment and discrimination policy. Do you recall
17 seeing that during your time at nextSource?

18 **A.** I believe I did see it, yes.

19 **Q.** Okay. Do you know anything about, you know, how that
20 was -- how or if that was distributed to any of the contract
21 workers?

22 **A.** Once again, I believe it was part of the initial first-day
23 packets.

24 **Q.** Okay.

25 **A.** I don't recall exactly what was in those packets at this

1 time. It's been quite a few years.

2 **Q.** When you became a program manager, when you switched from
3 becoming a contract recruiter to a program manager, you were
4 physically on site with the employees that nextSource placed
5 at Tesla; correct?

6 **A.** Yes.

7 **Q.** And as the program manager, did you make yourself
8 available to the contract workers --

9 **A.** Yes.

10 **Q.** -- to come to you with any issues?

11 **A.** Yes.

12 **Q.** Okay. And these issues included anything from attendance
13 issues to scheduling issues; right?

14 **A.** Yes. Any type of issues they would bring to my attention
15 and I would share it with their agency and/or Tesla.

16 **Q.** Okay. And these also included any complaints that they
17 would have; correct?

18 **A.** Yes.

19 **Q.** Okay. And if someone alerted you to a complaint about
20 something or someone, you would sometimes assist the staffing
21 agency in gathering information; is that correct?

22 **A.** Yes.

23 **Q.** Okay. If a contract worker brought a complaint to you as
24 the program manager and you assisted with gathering
25 information, you would provide that information to their

1 employer; correct?

2 **A.** I would provide it to their employer and Tesla --

3 **Q.** Okay.

4 **A.** -- depending on the situation.

5 **Q.** Would you always include that information to Tesla?

6 **A.** Yes. If I didn't, my supervisor would.

7 **Q.** Okay. Can I have you take a look at your deposition
8 transcript on Page 24, Line 18 through 24? Or I guess 24/18
9 through 25/6.

10 **A.** Yes.

11 **Q.** And does this refresh your recollection of whether or not
12 you would necessarily provide any information from fact
13 gathering to Tesla?

14 **A.** Like I said, it depended on the issue or the situation.
15 Of course, their employer was the first one to be notified, but
16 Tesla was almost always kept in the loop.

17 **Q.** Okay. So Tesla was kept in the loop on certain fact
18 gathering that you would do with respect to investigations;
19 correct?

20 **A.** Yes. If I didn't share it with them, my supervisor Terri
21 Garrett would share it with them.

22 **Q.** But you wouldn't say that they were always kept in the
23 loop; right?

24 **A.** I would say a good -- most of the time, yes. They were --
25 they were never really in the dark about things, no.

1 **Q.** Okay. But at your deposition did you testify in response
2 to whether or not you provided that information to Tesla, do
3 you recall saying (as read) :

4 **"ANSWER:** No. I provided it to their employer"?

5 **A.** I don't recall. But I -- once again, as I am stating to
6 you now, we would provide it to their employer and Tesla would
7 be looped in, especially if it was a more severe incident. And
8 if I didn't -- if I didn't let Tesla HR know, my supervisor
9 Terri Garrett would let them know.

10 **Q.** Okay. When it came to discipline for any reason, I think
11 you previously testified you were able to make recommendations;
12 correct?

13 **A.** I would make recommendations, but they didn't -- they
14 weren't the final. It was totally up to the employer and/or
15 whatever guidance Tesla provided.

16 **Q.** Okay. So with your recommendation and Tesla's guidance,
17 the employer, so the staffing agency, would make the decision
18 on discipline; is that right?

19 **A.** They would have to make that decision because it was their
20 employee.

21 **Q.** Right. Discipline issued to the contract workers, where
22 is that kept?

23 **A.** It would be with their employer. We wouldn't -- I
24 wouldn't -- once again, I could not discipline someone that was
25 not my employee.

1 **Q.** So if a contract worker were to be issued discipline, a
2 record of that would be kept with the staffing agency; correct?

3 **A.** It should be, yes. They would be the ones.

4 **Q.** Okay. At some point around October 18, 2015, you became
5 aware of a verbal altercation between Ramon Martinez and Owen;
6 correct?

7 **A.** I believe so, yes.

8 **Q.** Okay. If I could have you take a look at Exhibit 103. I
9 believe this has been admitted.

10 **THE COURT:** It has.

11 **MS. JENG:** May we publish?

12 **THE COURT:** You may.

13 (Document displayed.)

14 **BY MS. JENG**

15 **Q.** Okay. You recognize this email between you and Terri
16 Garrett; correct?

17 **A.** Yes.

18 **Q.** Okay. Do you see where you say to Ms. Garrett you're on
19 the phone now dealing with the Owen and Ramon issue?

20 **A.** Yes.

21 **Q.** Do you recall who you were on the phone with?

22 **A.** I don't recall, no. It could have been the agency or it
23 could have been Ed Romero or Victor Quintero.

24 **Q.** Okay. And you told Ms. Garrett that you would call her in
25 a few minutes to discuss; right?

1 **A.** Yes.

2 **Q.** And you recall speaking with Ms. Garrett about this
3 incident with Owen and Ramon; correct?

4 **A.** Yes. And that's when she was saying to direct it to
5 Tesla's HR as well.

6 **Q.** Okay. And do you recall speaking with Owen about this
7 incident?

8 **A.** I'm pretty sure I did. I don't recall the actual
9 conversation, though.

10 **Q.** At some point you asked Owen to forward you a written
11 statement; is that right?

12 **A.** I most likely did. I needed a statement from each of them
13 with regards to what happened so that I could send it on to the
14 agency.

15 **Q.** Could you take a look at Exhibit 242?

16 **MS. JENG:** This has been stipulated as admissible.
17 May we publish?

18 **THE COURT:** You may.

19 (Document displayed.)

20 **BY MS. JENG**

21 **Q.** Okay. If you look on 242-9, which is the
22 second-to-the-last page -- or I guess -9 and -10, so
23 second-to-last page and the last page, did you receive this
24 email on October 20th from Owen?

25 **A.** I probably did.

1 **Q.** And it appeared to you that he was forwarding an email
2 from -- an email statement from October 17, 2015, that he
3 wrote; correct?

4 **A.** It looks like he initially sent this to Ed Romero, and I
5 guess that he must have forwarded it to me.

6 **Q.** That's right.

7 You recall Owen telling you about this incident he had
8 with Ramon and Rothaj Foster; correct?

9 **A.** Uh-huh.

10 **Q.** And then higher up in the email you forward the statement
11 to Ms. Garrett and say you're waiting for Rothaj and Ramon to
12 send their statement; correct?

13 **A.** Yes.

14 **Q.** Is that -- when you say Ramon's statement," is that a
15 typo? Do you mean -- do you mean this is Owen's statement?

16 **A.** It could be. I don't recall.

17 **Q.** Well, the statement below looks like it's written from
18 Owen; right?

19 **A.** Yes.

20 **Q.** Okay. So does that --

21 **A.** It could be a typo.

22 **Q.** Okay.

23 **A.** I don't recall.

24 **Q.** Okay. Because in the sentence immediately after that, you
25 say you're waiting for Rothaij and Ramon "to send me theirs";

1 right?

2 **A.** Once again, it could have been a typo. It's been several
3 years.

4 **Q.** And so the next email on 242-8, it was your understanding
5 that Ed was planning to meet with Rothaj, Owen, and Ramon;
6 correct?

7 **A.** Yes.

8 **Q.** And Terri asked you why Ed is meeting with them; correct?

9 **A.** Yes.

10 **Q.** Are you aware that Ms. Garrett later recommends that Ed
11 not be involved?

12 **A.** I don't know if I was in that email. I can't see.

13 **Q.** Okay. And Terri was the director of operations from
14 nextSource; right?

15 **A.** Yes.

16 **Q.** Okay. So after you received this email statement from
17 Owen, did you speak with Owen again to give him an opportunity
18 to tell his side of the story?

19 **A.** I most likely did; or if I did not, he was directed to
20 contact his agency.

21 **Q.** Do you recall Owen saying anything to you about this
22 incident in his statement?

23 **A.** I don't recall, ma'am. It's been five, six years.

24 **Q.** I understand.

25 **A.** Yeah.

Q. Do you recall testifying that Owen's verbal statement to you was different from what he put down in an email?

A. I don't recall. It could be the case. I don't recall.

Q. Okay. I'll have you look at your deposition transcript, Page 65, Line 19 through Page 66, Line 2.

A. Which line?

Q. 65, Line 19 to 66, Line 2.

(Brief pause.)

A. Yes.

Q. Does this refresh your recollection that Owen actually gave you a verbal statement that was different from what he emailed?

A. No. That doesn't recall -- that doesn't jar my memory at all, because it really doesn't deal with anything with regards to his -- yeah. I don't -- I don't recall that, no.

Q. Well, what you testified to was that even though his email said that he felt he was about to be struck, he did not express that when he spoke to you: is that right?

MR. ALEXANDER: Objection. Argumentative.

THE COURT: And I think you're referring to a different section of the deposition than you've referred the witness to. You had him start on Page 65, Line 19.

MS. JENG: Oh. I'm sorry.

BY MS. JENG

Q. Okay. Can you look at 64/8 through 65/15 -- or, sorry.

1 Yeah, 65/15. Sorry about that.

2 **A.** Yes.

3 **Q.** Okay. So does this refresh your recollection that what
4 Owen told you verbally was different than what he emailed in
5 his statement?

6 **A.** If I remember correctly, it was more of them about to
7 actually get into a physical altercation.

8 **Q.** Okay. And is that what Owen articulated to you when he
9 spoke with you?

10 **A.** I believe so, yeah. He was more or less he's not going to
11 allow someone to talk to him like that.

12 **Q.** Okay. And when you spoke with Owen, you don't recall him
13 saying that Ramon was calling him the "N" word at all, do you?

14 **A.** No, I do not recall that.

15 **Q.** Okay. You don't recall when Owen spoke to you saying that
16 Ramon used any racial slurs against him; correct?

17 **A.** I don't recall it being any racial slurs. At this point I
18 can't -- yeah, I can't recall that. I don't think the racial
19 stuff came in until the drawings.

20 **Q.** That's right.

21 Okay. And then at this point you don't recall Owen
22 mentioning that Ramon had said, quote, "I hate you," "N" word;
23 is that right?

24 **A.** No, I do not recall that at all.

25 **Q.** Okay. So your recollection of Owen's complaint against

1 Ramon having anything to do with race was the drawing; correct?

2 **A.** Yeah. That's when the drawing -- is when the racial
3 aspect came in. The first time it just seemed like an
4 argument, a verbal altercation that the two got into.

5 I don't recall any racial epithets being thrown either way
6 at that point or that I was notified of. Like I said, it
7 wasn't until the drawings came that that portion came up.

8 **Q.** Thank you.

9 **A.** And once those drawings came, I know Tesla was immediately
10 notified.

11 **Q.** Thank you.

12 Do you recall Ed Romero forwarding you Ramon Martinez's
13 complaint against Owen at some point related to this incident?

14 **A.** I don't recall, but I'm not sure he probably did.

15 **Q.** Okay. Can you look at Exhibit 49, please?

16 **A.** I don't have 49.

17 **THE COURT:** It's in the black binder.

18 (Brief pause.)

19 **BY MS. JENG**

20 **Q.** Do you recall receiving this?

21 **A.** I don't recall, but I'm sure I did, yeah.

22 **Q.** Okay. Does that look like your email address right there?

23 **A.** Yes. It wasn't sent direct. It looks like it was
24 forwarded to me from others, yes.

25 **Q.** So you spoke with Ramon at some point and took notes; is

1 that right?

2 **A.** I believe so, yes.

3 **Q.** And you took these notes on a laptop -- on a nextSource
4 laptop; is that right?

5 **A.** It could have been on the laptop or handwritten. I don't
6 recall.

7 **Q.** Okay. And when you left nextSource, those notes were
8 kept with nextSource; correct?

9 **A.** Yeah. Any files I had or anything were left with the
10 company.

11 **Q.** Okay. Can you look to Exhibit 76?

12 **THE COURT:** Did you want 49 in evidence?

13 **MS. JENG:** Oh, yes. Yes. Can we move that into
14 evidence?

15 **THE COURT:** Is there any objection?

16 **MR. ALEXANDER:** No objection.

17 **THE COURT:** Admitted.

18 (Trial Exhibit 49 received in evidence)

19 **MS. JENG:** Can we publish?

20 (Document displayed.)

21 **BY MS. JENG**

22 **Q.** Do you recall that Ramon actually made his complaint
23 against Owen before Owen's complaint against Owen in -- Owen's
24 complaint against Ramon in 2015?

25 **A.** I don't believe that was the case, but it could very well

1 be.

2 **Q.** Okay.

3 **A.** They might have been simultaneous when they made their
4 complaints.

5 **Q.** I'm sorry. Can you repeat that last part?

6 **A.** It might have been simultaneous or at the same time when
7 they made their complaints. I'm not sure.

8 **Q.** Okay. Can I have you look at Exhibit 76.

9 **MS. JENG:** This has been admitted. May we publish?

10 **THE COURT:** It's in? I don't see that it is in.

11 **MS. JENG:** Oh.

12 **THE COURT:** Oh, yes, it is. I take it back.

13 Okay. And you may publish.

14 (Document displayed.)

15 **BY MS. JENG**

16 **Q.** Okay. And at some point after you talked to Owen and
17 Ramon, you and Terri also spoke; is that right?

18 **A.** Yes.

19 **Q.** And when you spoke with either Owen or Ramon, neither of
20 them mentioned anything about race; is that right?

21 **A.** No. If I remember correctly, once again, at this point it
22 was more of a verbal altercation and they both were kind of
23 saying that the other shouldn't speak to them like that.

24 **Q.** When you testified earlier, you testified that you didn't
25 know who Rothaj Foster was; correct?

1 **A.** Yeah. I don't recall that name.

2 **Q.** And you don't recall whether or not he was spoken to; is
3 that right?

4 **A.** He most likely was, but I don't recall that. That
5 individual name just doesn't stick out to me. I can't remember
6 if he was a contractor, if he was a Tesla employee. I don't
7 recall. That particular name doesn't stand out to me.

8 **Q.** Well, if you look at page -- or Exhibit 76-1 --

9 **A.** Uh-huh.

10 **Q.** -- in the top email you say (as read) :

11 "Yes, I have spoken with all three and will be
12 speaking with Ramon and Owen again on Friday."

13 Does that refresh your recollection of whether or not you
14 spoke with Ramon, Owen, and Rothaj?

15 **A.** I probably did. Once again, I just don't recall Rothaj,
16 that name. If I spoke to him, it was probably once or twice.
17 I don't even recall him as far as being an actual contractor
18 with nextSource or with any of the agencies.

19 So I'm not sure if he was a -- Tesla had their own
20 elevator people as well, so...

21 **Q.** Okay. You don't know why nextSource was instructing you
22 that -- to tell -- or -- strike that.

23 You testified earlier you don't know why Terri was
24 informing you that no formal investigation was needed; right?

25 **A.** I don't recall that. Once again, they weren't our

1 employees, so it could have been referring to that they were
2 already -- their agency was on it or -- and/or Tesla was
3 involved because Terri would -- would cc Tesla HR on all these
4 issues or complaints.

5 **Q.** And it's your understanding that both Ramon and Owen were
6 referred to be counseled?

7 **A.** Yes, by their agencies.

8 **Q.** That's right. And this was after you spoke with all three
9 of them; correct?

10 **A.** Yes.

11 **Q.** Could I have you look at Exhibit 254?

12 **MS. JENG:** This is stipulated as admissible.

13 **THE WITNESS:** I don't have a 254. Oh, here it is.

14 Okay.

15 **THE COURT:** All right. It's admitted.

16 **MS. JENG:** May we publish?

17 **THE COURT:** Yes.

18 (Document displayed.)

19 **MR. ORGAN:** Your Honor, 254 isn't stipulated. We had
20 an objection.

21 **THE COURT:** Okay. And so lay a foundation, please.

22 **MS. JENG:** Okay.

23 **THE COURT:** Let's be clear about what's agreed to be
24 admitted into evidence and what's not. Okay.

25

1 **BY MS. JENG**

2 **Q.** Mr. Jackson, do you recall receiving this email from
3 Ms. Garrett?

4 **A.** I don't recall this one. I very well could have, but I
5 don't recall.

6 **Q.** Okay. Well, that's your email on there; right?

7 **A.** Yes, it is.

8 **Q.** Do you recall this incident between Rothaj and Owen?

9 **A.** To be honest, I don't really recall the actual incident.
10 I do know that -- I do know that there were a few complaints
11 with regards to Owen and his --

12 **MR. ALEXANDER:** Objection. Move to strike. Beyond
13 the scope of the question.

14 **THE COURT:** Yeah, sustained. The jury will disregard
15 the last statement by Mr. Jackson.

16 **BY MS. JENG**

17 **Q.** Okay. Well, with respect to this incident between Rothaj
18 and Owen, what do you recall happening between the two of them?

19 **A.** I really don't. I don't recall. There were something --
20 there were a lot of incidents and accidents in the elevator
21 area where they would hit walls and things of that nature, so
22 I'm sure it had something to do with that. I don't recall the
23 actual details, though.

24 **Q.** Okay. If you look at 254-2, you see this email where Ed
25 says (as read) :

1 "I could not allow anyone to be threatened by any
2 other employee. I do not recommend" --

3 **MR. ALEXANDER:** Objection.

4 **THE COURT:** Sustained. You need to first either get
5 this document admitted or not. And if you have a different
6 question, you can ask a question without referring to the
7 document.

8 **MS. JENG:** Okay.

9 **BY MS. JENG**

10 **Q.** So on November 6th of 2015, there was an altercation of
11 some sort between Owen and Mr. Foster; is that correct?

12 **MR. ALEXANDER:** Objection. Leading. Foundation.

13 **THE COURT:** Sustained.

14 **BY MS. JENG**

15 **Q.** Do you recall an incident between Mr. Foster and Owen in
16 November of 2015?

17 **MR. ALEXANDER:** Objection. Your Honor, we have the
18 document on the screen.

19 **THE COURT:** Yeah, so don't look at the document.
20 Just --

21 **THE WITNESS:** Oh. Well, I thought I was supposed to.

22 **THE COURT:** You previously testified that you didn't
23 remember an incident between Mr. Foster and Mr. Diaz. Is that
24 still your testimony?

25 **THE WITNESS:** Yeah. I -- to be very honest, there

1 were a few. I don't know how to answer because there were a
2 few issues with Owen and other individuals.

3 **THE COURT:** Well, I'm really asking about Mr. Foster.

4 **THE WITNESS:** I don't recall, Your Honor. It was
5 five, six years ago. I can't remember each incident,
6 unfortunately --

7 **THE COURT:** All right.

8 **THE WITNESS:** -- but there were several.

9 **BY MS. JENG**

10 **Q.** Okay. So you don't remember an incident specifically
11 between Owen and Mr. Foster because there were a lot of
12 complaints; is that right?

13 **MR. ALEXANDER:** Objection. Objection.

14 **THE COURT:** Sustained.

15 **MR. ALEXANDER:** It's improper.

16 **BY MS. JENG**

17 **Q.** Well, you just testified that there were a lot of
18 incidents between Owen and other workers at the factory; is
19 that right?

20 **MR. ALEXANDER:** Objection. It's inappropriate. Move
21 to strike any reference to other issues that were nonresponsive
22 to a question posed.

23 **THE COURT:** Sustained.

24 **BY MS. JENG**

25 **Q.** Okay. I'd like to turn to Exhibit 271 -- sorry. We'll

1 look at 31 because I believe that's admitted.

2 **A.** Go back to 31?

3 **Q.** Yes.

4 **A.** It must be in this binder.

5 **Q.** Okay. Do you recall receiving this email from Owen Diaz
6 on January 22nd, 2016?

7 **A.** This email is not from Owen Diaz.

8 **Q.** Well, if you look at the first -- the very first page, do
9 you see where Owen Diaz is forwarding the email to you?

10 **A.** This -- from what I'm seeing, this is from Terri Garrett.

11 You said -- you said 31; correct? Exhibit 31?

12 **Q.** Yes.

13 **A.** Okay.

14 **THE COURT:** Look on the second page towards the
15 bottom.

16 **THE WITNESS:** Oh, there is a second page. Okay.

17 Yes, okay.

18 **BY MS. JENG:**

19 **Q.** And here Veronica tells you that Ramon is on his way to
20 her office; correct?

21 If you scroll up, the very first email.

22 **A.** I don't see that. I'm lost. I'm sorry. The first email
23 I see is Erin -- going to Erin from Terri Garrett.

24 Then it's my saying he was instructed by Victor. Why is
25 Ed meeting them? So I don't -- is this part of 31?

1 Q. Yeah.

2 MS. JENG: Can you scroll up a bit?

3 BY MS. JENG

4 Q. Sorry. I'm going to have you turn to 271. I'm sorry. We
5 were trying to de-dupe exhibits on the break.

6 A. 271?

7 Q. Yes.

8 A. Yes, that's from his agency. Once again, I directed him
9 back to the agency with the complaint.

10 Q. And Veronica is from Owen's agency; correct?

11 A. Yes.

12 Q. And did you speak with Veronica that day?

13 A. I most likely did.

14 Q. Okay. I'll have you look at 284.

15 MS. JENG: I believe this is also stipulated as
16 admissible.

17 THE COURT: Okay. It's admitted.

18 (Trial Exhibit 284 received in evidence)

19 MS. JENG: Can we publish?

20 THE COURT: Yes.

21 (Document displayed.)

22 BY MS. JENG

23 Q. Do you recall Veronica informing you on the phone that
24 Chartwell would start an investigation?

25 A. I believe so, yes. Any time that I sent over stuff, they

1 would do their own investigations.

2 **Q.** Okay. And by this point you have spoken with Ramon, Owen,
3 and Chartwell; correct?

4 **A.** Yes.

5 **Q.** Okay. By the time you received the complaint or became
6 aware of it, you already knew at that point who had done the
7 drawing, correct, that offended Owen?

8 **A.** Yes. Ramon had admitted to it.

9 **Q.** Okay. Ramon had admitted to drawing the picture; correct?

10 **A.** Yes.

11 **Q.** Do you recall what shift Ramon worked?

12 **A.** I don't recall, no.

13 **Q.** When you spoke with Owen about this drawing, what did Owen
14 express to you?

15 **A.** If I remember correctly he was offended by it.

16 **Q.** Okay. Did he mention anything else he was offended other
17 than the drawing?

18 **A.** Other than the way Ramon and him interacted. You know,
19 they -- they seemed to have, like I said, a verbal altercation
20 prior to that.

21 **Q.** When you say "verbal altercation," that was the
22 October 2015 incident that we just talked about; correct?

23 **A.** I believe so, yes.

24 **Q.** Okay. In addition to your communications with Chartwell,
25 did you also have conversations with Victor Quintero about the

1 drawing?

2 **A.** Yes. Victor Quintero, Ed Romero, Jose Torres, and I can't
3 remember the person in Tesla HR that we also informed of it.

4 **Q.** Okay. And you recall emailing Victor to say you needed to
5 talk to him as soon as possible after you heard of this
6 complaint; correct?

7 **A.** Yes. I was alerted by Ed Romero so I reached out, I
8 believe, to Victor.

9 **Q.** Okay. And Victor had expressed to you that the drawing
10 was inappropriate; right?

11 **A.** Yes.

12 **Q.** Okay. And you and Victor did discuss potential discipline
13 together; correct?

14 **A.** Yes. I believe so.

15 **Q.** Do you -- okay.

16 Can you look at Exhibit 77, which has already been
17 admitted?

18 **A.** I have a 76. I don't see a 77.

19 **THE COURT:** Neither do I.

20 **THE WITNESS:** I've got 76 in both. I don't have a 77.

21 **BY MS. JENG**

22 **Q.** Okay. You don't see a 77?

23 **A.** No, ma'am. I have two 76s; one 76 in this binder and one
24 76 in this binder.

25 **Q.** Well, then I'll have you look at Exhibit 272.

1 **A.** 272?

2 **Q.** Yes.

3 And this is stipulated as admissible.

4 Do you see 272, Page 2? Up top in that email from Victor,
5 in Victor's email to you, does that accurately reflect what you
6 and Victor discussed with respect to discipline?

7 **A.** Yes, for the most part.

8 **Q.** Okay. And was it your understanding that Jose would also
9 be speaking with the team members about this incident?

10 **A.** Yes.

11 **Q.** Okay. Could you look at Exhibit 274?

12 **MS. JENG:** This has also been stipulated as
13 admissible. We can publish it?

14 **THE COURT:** All right. It's in.

15 (Trial Exhibit 274 received in evidence)

16 **BY MS. JENG**

17 **Q.** Okay. If you look at 274-1, your email to Terri, do you
18 see that?

19 **A.** Yes.

20 **Q.** Okay. And does this accurately reflect your discussions
21 with Victor regarding discipline?

22 **A.** Somewhat. I also -- I don't think I included here, but
23 also I -- I thought that there should be a -- there could be a
24 removal from site. It was that serious of an issue.

25 **Q.** Okay. Well, in your email you say (as read) :

1 " My suggestion to him was a final written warning
2 with a three-day suspension without pay. "

3 Correct?

4 **A.** Once again, he suggested a written warning, and I told him
5 I didn't think that was enough --

6 **Q.** That's right.

7 **A.** -- which is where I, once again, said that even removing
8 from site would be good.

9 At that point I believe, if I'm not mistaken, Victor
10 thought that Ramon was a good worker and he wanted to keep him
11 on, if I'm not mistaken. And that's where the written
12 three-day suspension came up.

13 **Q.** That's right. So Victor had initially suggested a final
14 written warning; correct?

15 **A.** Once again, yes.

16 **Q.** Okay. And when you suggested further discipline, you said
17 that Victor thought that was an even better idea; is that
18 right?

19 **A.** Once again, I suggested that that was not enough for the
20 serious nature of the -- the infraction.

21 **Q.** Okay. But you wrote that Victor thought that your
22 suggestion was the better idea than -- a better idea than his;
23 correct?

24 **A.** Yes.

25 **Q.** Okay. Terri responds to your email that (as read) :

1 "The final written warning would have to be extremely
2 clear that there's no room for further error ."

3 Did you personally communicate to Mr. Martinez that there
4 is no room for further error?

5 **A.** No, I did not. Once again, he was not my employee, so
6 that would have been his agency, which was either, Chartwell,
7 Manpower or CitiStaff. I can't remember which exact agency he
8 was with.

9 **Q.** Okay. But you had a conversation with Mr. Martinez;
10 correct?

11 **A.** Yes.

12 **Q.** And in that conversation you made it clear that you
13 thought that the drawing was inappropriate; correct?

14 **A.** Yes.

15 **Q.** So you personally met with Mr. Martinez about the drawing;
16 is that right?

17 **A.** Yes.

18 **Q.** And in addition, you also referred him to his agency,
19 correct?

20 **A.** Yes, because his agency had to make the final
21 determination.

22 **Q.** You also met with the different crews to let them know
23 that these types of actions were unacceptable; is that right?

24 **A.** Yes, I did.

25 **Q.** Okay. And so you met with the morning, the swing shift,

1 and the grave shift; correct?

2 **A.** Yes.

3 **Q.** To let them know that these types of actions were not
4 acceptable; correct?

5 **A.** Yes.

6 **Q.** And during these meetings, do you recall anyone raising
7 complaints about anything?

8 **A.** I don't recall, no.

9 **Q.** Your understanding is that Ramon also apologized to Owen;
10 is that correct?

11 **MR. ALEXANDER:** Objection. Hearsay. Foundation.

12 **THE COURT:** Sustained.

13 **BY MS. JENG**

14 **Q.** Well, you had an understanding that Ramon apologized to
15 Owen. That's what you were told; right?

16 **MR. ALEXANDER:** Same objection.

17 **THE COURT:** Yeah. Sustained.

18 **BY MS. JENG**

19 **Q.** Well, do you know of any apology that was given by Ramon
20 to Owen?

21 **MR. ALEXANDER:** Same objection, Your Honor.

22 **THE COURT:** Do you have any personal knowledge? Were
23 you present at any apology given by anybody?

24 **THE WITNESS:** Not that I recall, no. Not that I
25 recall.

1 BY MS. JENG

2 Q. Okay. You testified earlier that you had heard the
3 "N" word at the factory; is that right?

4 A. Yes.

5 Q. Okay. And you testified you heard it daily; is that
6 right?

7 A. Yes. It was pretty rampant throughout Tesla.

8 Q. So your testimony is that it was rampant and daily; is
9 that correct?

10 A. Once again, yes. I heard it several times daily, weekly;
11 and it wasn't always -- it's hard for me as a black man to say,
12 but it wasn't always just a derogatory.

13 There's -- there's kind of two inflections with the word
14 so you would hear it both ways.

15 Q. All right.

16 A. You would hear people using it derogatory and you would
17 hear it used as camaraderie in a sense.

18 Q. Do you recall testifying that you actually only heard it
19 three or four times?

20 A. I don't recall that because, once again, ma'am, I would
21 hear that on a regular basis at Tesla.

22 Q. Okay. So you don't recall testifying that you actually
23 only heard it said three or four times?

24 A. I don't recall that. I may have said that; but to be very
25 honest, it was on a regular basis that you would hear it. It

1 was a very, like I said, a high-school-type environment, very
2 clique-ish. And, unfortunately, there is racism in the world.

3 **Q.** Now, you didn't report it -- you didn't ever report
4 hearing it because the context in which you heard it was not to
5 offend; is that correct?

6 **A.** I didn't report it probably because that seemed like the
7 norm there, and I reported it to my supervisor.

8 **Q.** Do you recall testifying that you didn't report it because
9 the context in which it was being used -- in which it was being
10 used was not, in your opinion, to offend?

11 **A.** Once again, I heard it in both contexts. There's a way of
12 saying the word, the inflections used with the word and what
13 statements you're making when you're using the word that you
14 could tell there's a different meaning to it.

15 **Q.** Well, you heard it in the context of, quote, "What's up,
16 my 'N'"; is that right?

17 **A.** I've heard it in both contexts, and I've heard it in other
18 contexts. Like, "That stupid..." I've heard that before
19 there.

20 **Q.** Do you recall testifying that you have never heard it
21 directed in a way that was threatening or offensive?

22 **A.** Ma'am, to be honest, the word can be offensive to anybody
23 of color if they hear it even if it's not used in a certain
24 context. Depending on how you were raised and situations
25 you've been in, you could find that word very offensive.

1 Q. But you didn't perceive it to be threatening or offensive;
2 correct?

3 A. It was never directed at me in that sense, no.

4 Q. Okay. Did you ever see or hear anyone calling Owen the
5 "N" word?

6 A. Not that I can recall, no.

7 Q. With respect to Owen, how often do you recall speaking
8 with him?

9 A. I actually spoke to Owen a few different occasions. There
10 were -- like I said, there were a few different incidents with
11 altercations.

12 Q. Okay. What altercations can you remember Owen getting
13 into that you were aware of?

14 A. There were several disagreements with other elevator
15 operators.

16 Q. Okay. Who are the other elevator operators?

17 A. I could not tell you those names, ma'am. They came and
18 went, you know, according to needs. So I don't recall all
19 those names.

20 Q. Do you recall speaking with Ed Romero about Owen's
21 altercations?

22 A. Yes.

23 Q. Okay.

24 A. He would actually -- Ed would -- most of the time Ed would
25 notify me of them because of -- he was more of the supervisor

1 for Tesla over Owen and the elevator operators, and he would
2 notify me if there were any incidents.

3 **Q.** Can you look at Exhibit 301, please.

4 Do you recall getting this email about -- I'm sorry.

5 Strike that.

6 Do you recall an incident between Owen and Troy Dennis?

7 **A.** I don't recall the -- the details of the incident, but
8 I -- once again, there were a few incidents with Owen Diaz and
9 others getting into altercations, there were.

10 **MR. ALEXANDER:** Excuse me. If there is -- there's a
11 document on the screen that has not been referenced.

12 **THE COURT:** Is it showing to the jury at the moment?

13 Okay.

14 **MR. ALEXANDER:** It's been shown to the witness, and
15 there's no foundation for it.

16 **THE COURT:** Well, there can't a foundation unless he's
17 looking at it. They have to lay that foundation.

18 **MR. ALEXANDER:** The question is being asked based on
19 the document. That was my issue.

20 **THE COURT:** So lay the foundation for admitting this
21 document if you're going to use it.

22 **MS. JENG:** Okay.

23 **BY MS. JENG**

24 **Q.** Mr. Jackson, did you receive this email on March 2nd,
25 2016?

1 **A.** I believe so.

2 **Q.** On or around March 2nd, 2016?

3 **A.** I believe so.

4 **Q.** Okay. And what was your understanding of the altercation
5 that happened between Troy and Owen?

6 **A.** Once again, I don't remember the details, but I believe
7 they got into --

8 **THE COURT:** Would you offer -- once you establish a
9 sufficient foundation, if you would offer it into evidence,
10 then we can get an objection and move forward. Okay?

11 **MS. JENG:** Okay.

12 Okay. And, Your Honor, can we move this into evidence?

13 **THE COURT:** Any objection?

14 **MR. ALEXANDER:** No, Your Honor.

15 **MR. ORGAN:** No, Your Honor.

16 **THE COURT:** Okay. It's admitted.

17 (Trial Exhibit 301 received in evidence)

18 **MS. JENG:** May we publish?

19 **THE COURT:** Yes.

20 (Document displayed.)

21 **BY MS. JENG**

22 **Q.** So was it your understanding at this time that you had
23 been told to look for replacements for both Troy and Owen?

24 **A.** I believe so, yes.

25 **Q.** Were you aware of any other altercations that Owen had had

1 at this time with other people?

2 **A.** Yes.

3 **Q.** Do you recall that Owen got into a lot of altercations
4 with a lot of people at Tesla?

5 **A.** Yes.

6 **Q.** And you don't recall any of those altercations being about
7 race; correct?

8 **A.** No. They were more arguments or either him instructing
9 someone to do something or them instructing him to do
10 something, and they just weren't on the same page.

11 **Q.** And it did seem to you that Owen was having continuous
12 verbal altercations with coworkers; correct?

13 **A.** If I remember correctly, there were a few, yes. And
14 that's not to say if he was right or wrong. I just knew there
15 were a few disagreements.

16 **Q.** Okay. Based on the feedback that you received, you
17 perceived Owen as a difficult elevator operator; correct?

18 **A.** I don't think that was my determination --

19 **MR. ALEXANDER:** I'm sorry. I was not able to hear the
20 question. I missed a word.

21 **THE COURT:** Could you ask it again?

22 **MS. JENG:** Sure.

23 **BY MS. JENG**

24 **Q.** Based on your feedback that others gave you about Owen,
25 you knew him to be a difficult elevator operator; correct?

1 **MR. ALEXANDER:** Objection. Hearsay.

2 **THE COURT:** Overruled. You can answer.

3 **THE WITNESS:** I wouldn't say that I personally did
4 because I didn't work directly with Owen. I know that Ed
5 Romero had alerted me of several situations.

6 **BY MS. JENG:**

7 **Q.** Okay.

8 **A.** But I wasn't there to witness the situations. I would
9 find out secondhand.

10 **Q.** Okay. At some point you became aware that a woman named
11 Joyce DelaGrande also complained about Owen; correct?

12 **A.** Yes. I do recall a Joyce DelaGrande complaining with
13 regards do Owen, yes.

14 **Q.** And her complaint was that Owen was acting
15 unprofessionally; correct?

16 **A.** I believe it was unprofessional or rude, or something to
17 that effect. I don't remember the details.

18 **Q.** You do recall a couple of occasions where Owen actually
19 raised his voice with you; correct?

20 **A.** I don't recall that, no. I don't recall him actually
21 raising his voice with me.

22 **Q.** Okay.

23 **A.** He may have been upset about something, but I don't recall
24 him actually raising his voice at me, no.

25 **Q.** Do you recall a situation where Owen Diaz was very

1 abrasive with you?

2 **A.** Once again, I wouldn't say it was abrasive. I would just
3 say that, you know, when sometimes you're in a situation where
4 you may be a little upset or heightened. I don't think he was
5 more or less directing it at me. It was more his frustration
6 probably of the situation.

7 **Q.** Okay. Well, it was a situation where you had to calm him
8 down; is that right?

9 **A.** There probably has been times, as in this field you
10 sometimes do have to get people to relax for a second so they
11 can explain their side. People can get emotional, and
12 sometimes you have to ask them to -- to kind of calm down, take
13 a woosah moment, take a breath, and just, you know, kind of
14 state the facts.

15 **Q.** And you did have to remind Owen to calm down; correct?

16 **A.** That could very well be the case.

17 **Q.** At some point you and Ed discussed replacing Owen as the
18 lead operator; correct?

19 **A.** Yes, I believe so.

20 **Q.** And switching Owen to the daytime as an elevator operator?

21 **A.** Yes. I believe that was Ed's suggestion just because of
22 the incidents that had occurred with the altercations.

23 **Q.** Okay. And you attempted to communicate those to Owen;
24 correct?

25 **A.** I believe so, yes.

1 **Q.** Okay. What was his response?

2 **A.** I don't recall. I don't recall off the top of my head.

3 **Q.** Okay. At some point you informed CitiStaff to inform Owen
4 not to return; correct?

5 **A.** I believe I probably did. I probably informed them that
6 Tesla did not want to continue his contract on site, which
7 probably came at the direction of either Ed or Victor.

8 And, like I said, it was probably due to the various
9 incidents that were occurring; but if you notice all the
10 emails, I've always cc'd Tesla, whether it was Victor or Ed or
11 someone, so that everybody was in the loop.

12 **Q.** Okay. What do you mean by "incidents that were
13 occurring"?

14 **A.** With the altercations that he had with other individuals.
15 Like you said, Joyce DelaGrande and some others that just
16 didn't feel he was acting in a professional manner with regards
17 to the elevator, which is why Ed, I believe, had tried to work
18 with him and move him to different shifts, if I remember
19 correctly, to try to alleviate any of those issues.

20 **Q.** Other than the drawing that we discussed earlier, did
21 Owen [sic] ever tell you that Owen made any sort of racial
22 slurs against him?

23 **A.** That Owen made slurs against --

24 **Q.** I'm sorry. That Romero made any racial slurs against
25 Owen.

1 **A.** I don't recall that. Like I said, they were almost going
2 to get into a physical altercation, but I don't know if anybody
3 used any racial epithets. I don't recall that.

4 **Q.** Okay. You don't recall Owen ever bringing to your
5 attention any racial epithets used; correct?

6 **A.** I don't recall. Other than the drawing, I don't recall
7 that. He could have, but I don't remember that.

8 **MS. JENG:** Okay. No further questions.

9 **THE COURT:** All right. Mr. Alexander.

10 REDIRECT EXAMINATION

11 **BY MR. ALEXANDER**

12 **Q.** It's a correct statement that Owen Diaz and Ramon Martinez
13 did not get along; correct?

14 **A.** I don't necessarily say that they didn't get along. They
15 just had a disagreement one day.

16 **Q.** Multiple disagreements; right?

17 **A.** The one was the -- the big disagreement where they were
18 outside the elevator, but I don't know if per se of multiple.

19 **Q.** So there was the one big disagreement outside the elevator
20 and then the jigaboo was the next incident?

21 **A.** Yes, sir.

22 **Q.** Okay. So with regards to that first incident, isn't it
23 true that Mr. Diaz said to you there was racial issues involved
24 in that first incident?

25 **A.** I don't recall that. I know the second incident

1 definitely there was.

2 **Q.** So when you say you don't recall that, that doesn't mean
3 it didn't occur. It just means it may or may not have
4 occurred?

5 **A.** It may have occurred, to be very honest, but I don't
6 remember him expressing that to me. It wasn't until the
7 drawing came out that that was really the expression then.

8 **Q.** So with regards to the drawing, at that point you
9 definitely remember; correct?

10 **A.** Yes, yes.

11 **Q.** But with regard to the elevator, it could have happened;
12 you don't recall one way or the other?

13 **A.** Yeah. The elevator was more of a disagreement, argument.
14 Like I say, it almost got physical.

15 **Q.** With regard to Ramon Martinez, did you ever hear him use
16 the word *mayate*?

17 **A.** I don't even know what that word is.

18 **Q.** Okay. Now, with regard to the staffing companies training
19 employees with regard to the workplace, did you ever see the
20 training that was received by contract employees at their
21 staffing companies?

22 **A.** No. I saw the training that they did on site.

23 **Q.** All right. And so with regard to what training contract
24 employees received from staffing companies, you don't know the
25 extent to which they were trained with regard to harassment

1 inside the workplace; right?

2 **A.** No, but I know by law they were supposed to make sure
3 their -- their employees went through that training.

4 **Q.** So you assumed that the staffing companies performed that
5 type of harassment training, but you don't know for a fact that
6 they did; correct?

7 **A.** I don't know for a fact, but by law they were supposed to.

8 **Q.** And with regard to determining whether the training that
9 they received, the contract employees, was consistent with the
10 policies that Tesla had, you don't know whether there was a
11 consistency between those policies in terms of the training;
12 correct?

13 **A.** In the State of California they should have been
14 consistent.

15 **Q.** They should have been, but as you sit here today, you're
16 assuming that they received that training, but you don't know
17 for a fact, do you?

18 **A.** I don't know for a fact, but by law it should have been.

19 **Q.** And in terms of your communicating any issues, serious
20 issues that occurred inside the workplace, that would include
21 communicating those issues to the Tesla human resources;
22 correct?

23 **A.** It would include Tesla human resources, but it would also
24 include, like I said, Ed Romero, Victor Quintero, who were the
25 supervisors of those departments.

1 **Q.** And you're familiar with Erin Marconi being an HR
2 supervisor --

3 **A.** Yes.

4 **Q.** -- or manager?

5 **A.** Yes.

6 **Q.** At Tesla?

7 **A.** Yes, we would cc Erin. If I didn't cc Erin, my boss Terri
8 Garrett would cc Erin.

9 **Q.** And so with regard to the jigaboo incident, you're sure
10 that that information was communicated to Erin Marconi?

11 **A.** Oh, I know it definitely was, yes. Yes.

12 **Q.** All right. And then if we could turn briefly to
13 Exhibit 272, Page 2.

14 With regard to that document, the first sentence (as
15 read) :

16 "Wayne, as we discussed in person, this is very
17 disappointing especially coming from one of our team's
18 supervisors."

19 That was a reference to Ramon Martinez as one of the team
20 supervisors; correct?

21 **A.** Yes, sir.

22 **Q.** With regard to Ms. DelaGrande, she was a Tesla supervisor,
23 a direct Tesla employee; correct?

24 **A.** Yes, sir.

25 **Q.** She was referring to unprofessional -- I'm sorry.

1 She was referring to Owen engaging in unprofessional
2 conduct; correct?

3 **A.** Yes. She was saying he was not being professional in the
4 workplace, was rude, and not following direction.

5 **Q.** And the unprofessional conduct was him refusing to speak
6 with other employees other than about work; isn't that correct?

7 **MS. JENG:** Objection. Calls for speculation.

8 **THE WITNESS:** I don't know.

9 **THE COURT:** So overruled.

10 **BY MR. ALEXANDER:**

11 **Q.** And your response was you don't know?

12 **A.** I don't know, you know, what her thought process was in
13 regards to that.

14 **Q.** You're familiar with a person by the name of Robert
15 Hurtado?

16 **A.** That name does not ring a bell.

17 **MR. ALEXANDER:** Nothing further, Your Honor.

18 **THE COURT:** Anything else, Ms. Jeng?

19 **MS. JENG:** No, Your Honor.

20 **THE COURT:** You may step down, Mr. Jackson.

21 **THE WITNESS:** Am I dismissed or do I have to come
22 back?

23 **THE COURT:** No. You are dismissed.

24 (Witness excused.)

25 **MR. ALEXANDER:** Your Honor, we would call Jackelin

1 Delgado.

2 **THE COURT:** All right.

3 (Brief pause.)

4 **THE COURT:** Come up to the witness box, please.

5 JACKELIN DELGADO SMITH,

6 called as a witness for the Plaintiff, having been duly sworn,
7 testified as follows:

8 **THE WITNESS:** Yes.

9 **THE CLERK:** Adjust the microphone so it's close to
10 your mouth.

11 And please state your full name for the record and spell
12 it for the court reporter.

13 **THE WITNESS:** Yeah. It's Jackelin Delgado Smith.

14 J-A-C-K-E-L-I-N; Delgado, D-E-L-G-A-D-O; Smith, S-M-I-T-H.

15 **THE COURT:** Please proceed.

16 **MR. ALEXANDER:** Thank you, Your Honor.

17 DIRECT EXAMINATION

18 **BY MR. ALEXANDER**

19 **Q.** Good morning, Ms. Delgado.

20 **A.** Good morning.

21 **Q.** If I understand correctly, at some point you were employed
22 with Chartwell; is that correct?

23 **A.** That's correct.

24 **Q.** And what is the last position that you held at Chartwell?

25 **A.** V.P. of HR.

1 **Q.** Vice-president of human resources. How long did you hold
2 that position?

3 **A.** A little bit over a year.

4 **Q.** Let's go through your background for a moment. You have a
5 Bachelor's of Science in human resources management; correct?

6 **A.** Correct.

7 **Q.** And at the time of your deposition, you were working on
8 your MBA. Have you obtained your MBA?

9 **A.** No. I'm still pursuing it.

10 **Q.** And you have previous experience, four years, working as a
11 field trainer at Smart & Final as a human resources person;
12 correct? Approximately?

13 **A.** I work at Target, but not as a field trainer. I was an HR
14 team lead.

15 **Q.** At Smart & Final you had human resource experience there
16 for four years; correct?

17 **A.** Correct.

18 **Q.** And then as a team leader at Target for approximately six
19 years?

20 **A.** I wasn't an HR team lead the whole six years. I was only
21 an HR team lead for five years.

22 **Q.** And the various jobs that you have had you've received
23 human resource experience and expertise; correct?

24 **A.** Correct.

25 **Q.** And during that time frame, also you were a member of the

1 Society of Human Resource Managers, something called SHRM;
2 right?

3 **A.** Yes.

4 **Q.** And that organization has standards as to what should
5 occur inside of the workplace in terms of conducting an
6 appropriate investigation; right?

7 **A.** Correct.

8 **Q.** And it also teaches you what are appropriate standards to
9 occur inside the workplace; correct?

10 **A.** Correct.

11 **Q.** And so anytime something serious inappropriate occurs
12 inside the workplace, there should be an investigation; right?

13 **A.** Correct.

14 **Q.** And that investigation should be prompt, thorough, and
15 impartial; correct?

16 **A.** Correct.

17 **Q.** And it should be an objective investigation with the
18 objective of getting at the facts; correct?

19 **A.** Correct.

20 **Q.** And so to the extent that there are any witnesses to
21 something that is important, you would want to interview every
22 witness possible in order to get to the facts; correct?

23 **A.** Yeah. It depends but, yes.

24 **Q.** So the goal is to interview witnesses in order to get to
25 the truth; right?

1 **A.** Yes, as best as possible.

2 **Q.** And it was typically your practice to want to interview a
3 person in person ideally; correct?

4 **A.** Ideally.

5 **Q.** But if it wasn't possible to interview a person, then you
6 would at least want to interview them by phone?

7 **A.** Correct.

8 **Q.** And with regard to the investigation, typically you want
9 to take contemporaneous notes, take notes at the same time as
10 while you're receiving information from the individual?

11 **A.** Correct.

12 **Q.** And at the conclusion of your investigation, it was your
13 standard practice to prepare a written report; right?

14 **A.** Yes.

15 **Q.** And included in that report would be your conclusions as
16 to what happened; right?

17 **A.** Sure.

18 **Q.** And the purpose of conducting a workplace investigation is
19 to find out what occurred and, if appropriate, take corrective
20 action; right?

21 **A.** Correct.

22 **Q.** And depending on the severity of the conduct, the
23 corrective action should match that severity; correct?

24 **A.** Yes.

25 **Q.** And part of the reason why you want to make sure that you

1 do a thorough, prompt, and impartial investigation is so that
2 you can correct conduct in the workplace so it doesn't occur in
3 the future; right?

4 **A.** Correct.

5 **Q.** And if you find out that conduct has occurred, you want to
6 correct it in case it's something that's not a single incident
7 but is something that is occurring throughout the workplace;
8 right?

9 **A.** Correct.

10 **Q.** All right. You're familiar with a person by the name of
11 Veronica Martinez; correct?

12 **A.** Correct.

13 **Q.** She is a branch -- she was a branch manager, the local
14 branch manager, associated with the Tesla location; is that
15 correct?

16 **A.** Correct.

17 **Q.** And she was out of the Hayward office?

18 **A.** Yes.

19 **Q.** With regard to Exhibit No. 287 -- which I believe we've
20 stipulated to, Your Honor --

21 **THE COURT:** Okay.

22 **MR. ALEXANDER:** -- I'd ask that it be received into
23 evidence.

24 **THE COURT:** All right. It's admitted.

25 (Trial Exhibit 287 received in evidence)

1 (Document displayed.)

2 **BY MR. ALEXANDER**

3 **Q.** Exhibit 79 is an email. If you look under January 25,
4 2016 --

5 **THE COURT:** So just for clarity's sake, we have in our
6 books Exhibit 79. You've put on the screen 287. They are the
7 same document; is that correct?

8 **MR. ALEXANDER:** That is correct. I --

9 **THE COURT:** Okay. So --

10 **MR. ALEXANDER:** I've been referring to it as 287. I
11 apologize.

12 **THE COURT:** That would be good. Okay.

13 **MR. ALEXANDER:** Thank you, Your Honor. I apologize.

14 **BY MR. ALEXANDER**

15 **Q.** With regard to Exhibit No. 287, there is a January 27,
16 2016 email from you to Veronica Martinez. Do you see that?

17 **A.** Yes, I see it.

18 **Q.** And this is with regard to a drawing that was made inside
19 of the workplace that you came to understand was drawn by Ramon
20 Martinez; is that correct?

21 **A.** Yes.

22 **MR. ALEXANDER:** If we could put up Exhibit No. 33, the
23 attachment with picaninny?

24 **BY MR. ALEXANDER**

25 **Q.** It was your understanding that Owen Diaz found the drawing

1 inside the workplace; right?

2 (Photograph displayed.)

3 **A.** I'm sorry. Can you repeat that?

4 **Q.** It was your understanding that Owen Diaz found this
5 drawing inside the workplace; correct?

6 **A.** Correct.

7 **Q.** And you did an interview of Mr. Diaz; correct?

8 **A.** Correct.

9 **Q.** And your interview is a handwritten statement that is on a
10 Chartwell Staffing Solutions document; correct?

11 **A.** Yes.

12 **Q.** All right. And during that interview, is it correct that
13 Mr. Diaz indicated that he was offended by the drawing?

14 **A.** Yes, I believe so.

15 **Q.** Now, with regard to Exhibit No. 287 -- 287 -- this
16 document, this email, is the -- strike that.

17 After you finished -- after you completed your
18 investigation, there was no report that was prepared by you;
19 isn't that correct? In terms of a full written report, there
20 was no written report prepared by you; isn't that correct?

21 **A.** Umm, yeah, I guess, if there isn't one in the email
22 thread.

23 **Q.** Okay. So in terms of your standard practice for preparing
24 a written report after you conduct an investigation, in this
25 instance you didn't follow the standard practice. There was no

1 written report; correct?

2 **A.** I wouldn't consider that a standard practice. I would
3 consider that a self practice.

4 **Q.** Best practices in terms of SHRM standards, in terms of
5 conducting a workplace investigation, is at the conclusion of
6 the investigation there should be a written report with regard
7 to your findings and conclusions; right?

8 **A.** Yes.

9 **Q.** And with regard to this investigation of a jigaboo, there
10 was no standard report prepared by you with your findings and
11 conclusions; right?

12 **A.** I believe this email is a final report of the conclusion.

13 **Q.** So Exhibit No. 287, the January 25, 2016, document, that
14 is the full extent of the report that you prepared with regard
15 to this jigaboo?

16 **A.** Yeah, the outcome. Like, the final outcome.

17 **Q.** Now, at the point when you prepared Exhibit No. 79, the
18 things that you had are the statement that you --

19 **MR. ORGAN:** You said 79. 287.

20 **MR. ALEXANDER:** I'm sorry.

21 **BY MR. ALEXANDER**

22 **Q.** At the point that you prepared the email that is 287, the
23 items that you had -- the universe of information that you had
24 was the email that Owen Diaz had sent you; correct?

25 **A.** Uh-huh.

1 **Q.** Yes?

2 **A.** The email?

3 **Q.** There's an email that Owen Diaz prepared with regard to
4 this jigaboo; right?

5 **A.** Umm, I think I'm confused.

6 **MR. ALEXANDER:** If I could -- with regard to Exhibit
7 No. 33, if we could put that on the screen? I believe it has
8 been received in evidence.

9 **MR. ORGAN:** Yes.

10 (Document displayed.)

11 **BY MR. ALEXANDER:**

12 **Q.** If you look at that, that is an email from Owen Diaz that
13 attaches photographs of the jigaboo, the drawing.

14 It's a correct statement that you were provided with this
15 email from Owen Diaz; correct?

16 **A.** Umm, I don't know if I was provided. I don't see my name
17 on this email.

18 **Q.** Okay. And you interviewed Owen Diaz and you have
19 handwritten notes from your interview of Mr. Diaz?

20 **A.** Yes.

21 **Q.** With regard to those notes --

22 **MR. ALEXANDER:** If you could display those, Exhibit
23 No. 287?

24 (Document displayed.)

1 **BY MR. ALEXANDER**

2 **Q.** With regard to a workplace investigation, you typically
3 want to interview the victim or the person complaining first;
4 right?

5 **A.** Not necessarily.

6 **Q.** But typically that is what you want to do in an ideal
7 circumstance, because the person complaining will identify the
8 subject matter that you're investigating; correct?

9 **A.** Correct.

10 **Q.** And in this instance you did actually interview Mr. Diaz
11 first; right?

12 **A.** I did, yes. He was available.

13 **Q.** Okay. And these are your handwritten notes; right?

14 **A.** Yes, they are.

15 **Q.** Now, if we turn to the second page of the document.

16 (Document displayed.)

17 **Q.** It says under Paragraph 4:

18 "How often has the offensive behavior occurred?"

19 And it says:

20 "Owen mentions history that happened in elevator.

21 HR was not aware, nor was Veronica branch manager."

22 There is an incident that he refers to in the elevator?

23 **A.** Uh-huh.

24 **Q.** If an incident occurred inside the elevator associated
25 with an employee that was hired through your staffing company,

1 you would have expected there to be a record of that inside
2 your files; right?

3 **A.** Yeah. But I didn't know about it.

4 **Q.** Okay. So with regard to this elevator incident, there was
5 no record inside your file; right?

6 **A.** No. This is the first time I was made aware of this
7 incident.

8 **Q.** And with regard to Veronica, the branch manager, you --
9 you spoke with her and she had no knowledge of this incident
10 involving the elevator and Owen Diaz and Mr. Martinez; correct?

11 **A.** I don't feel comfortable speaking to that. I -- because
12 it's so long ago that I don't even remember the conversation
13 that I had with her.

14 **Q.** Okay. The information that you wrote inside this note
15 where it says (as read):

16 "Owen mentioned history that happened."

17 And then it says:

18 "HR was not aware."

19 You would not have written that statement if it was not
20 true?

21 **A.** Right. But I didn't vocally remember speaking with her.
22 So if I wrote it on here, I must have already confirmed it with
23 her.

24 **Q.** So once you would have found out this information,
25 assuming you didn't know, did you try and search out

1 information about this previous history?

2 **A.** At the time I was not because I was focused on the
3 incident that was at hand at the time, which was the
4 investigation of the claim being made of the picture and the
5 drawing.

6 **Q.** In order to determine what discipline would be
7 appropriate, wouldn't you want to know what previous
8 inappropriate conduct the employee had engaged in?

9 **A.** Yes.

10 **Q.** And so with regard to Mr. Martinez, once you found out
11 that there was a history, wouldn't you have wanted to know the
12 specific facts of that history? Yes?

13 **A.** Yes.

14 **Q.** And in this instance at the point when you prepared
15 Exhibit No. 287, you did not have information about the
16 previous incident, the elevator incident, with Mr. Martinez;
17 right?

18 **A.** No, I didn't.

19 **Q.** So at the point when you recommended discipline of
20 Mr. Martinez, it did not include any consideration of the
21 elevator incident; correct?

22 **A.** I don't remember, because I probably was given that
23 information during the investigation, but, like, I honestly
24 can't remember.

25 **Q.** When you say you were probably given that information,

1 that's speculation. As you sit here today, you don't have any
2 actual recollection of receiving information about the elevator
3 incident; right?

4 **A.** Correct.

5 **Q.** If we go down further on the page at Paragraph 6 it says
6 (as read):

7 "I don't feel safe."

8 Do you see that?

9 **A.** Uh-huh.

10 **Q.** By the way, in terms of this document, these are your only
11 notes of the conversation with Mr. Diaz; right?

12 **A.** Yes.

13 **Q.** So Mr. Diaz said he did not feel safe. Did you ask him
14 why?

15 **A.** I don't remember. If it's on the --

16 **Q.** The reason you would have wanted to ask him why, is it
17 because it would have been important to know whether he felt
18 physically unsafe or something like that; right? Yes?

19 **A.** Correct.

20 **Q.** And you understood that this jigaboo was a racist type
21 drawing; right?

22 **A.** You're asking me what I -- what I -- are you asking me
23 what I saw when I saw the picture, or are you assuming that I
24 think that's what that is.

25 **Q.** When you looked at that picture, what did you think that

1 it meant?

2 **A.** I didn't think it meant anything. I was looking at a
3 picture without any other information at the time when I was
4 looking at the picture.

5 **Q.** So when you saw that drawing, you did not recognize it as
6 a racist epithet?

7 **A.** No. That's not what came to mind when I saw the picture.

8 **Q.** So when you spoke to Owen Diaz, did he tell you that he
9 saw it as a racist epithet?

10 **A.** Umm, I'd have to look at the notes. Like, I don't -- I
11 mean, I'm sure that's what happened. That's why we're here,
12 but I'd have to look at the notes.

13 **Q.** If you could look...

14 (Brief pause.)

15 **Q.** When Owen spoke with you, he indicated he found that
16 drawing offensive; isn't that correct?

17 **A.** Yes. When he -- when he did speak to me, yes.

18 **Q.** And when he spoke with you, he indicated that it was a
19 jigaboo or a picaninny, or a racist reference to
20 African-Americans; didn't he tell you that?

21 **A.** Yes, that's what he told me.

22 **Q.** Okay. So during your investigation and at the point you
23 were making a recommendation, you understood that Owen felt
24 that this was a racist epithet; right?

25 **A.** Correct.

1 Q. All right. And so then if we could -- if you could turn
2 to the third page of this handwritten document, Paragraph 10,
3 you ask (as read) :

4 "How would you like to see the information
5 resolved?"

6 You typically ask the person that's the victim of the
7 conduct how they would like to have the issue resolved; right?

8 A. Yes.

9 Q. And that's supposed to be taken into account at the point
10 when you make a recommendation; right?

11 A. Correct.

12 Q. And in this instance, if we could show that, Owen said (as
13 read) :

14 "He should be terminated. I do not trust him."

15 You see that reference?

16 A. Yes.

17 Q. And do you recall why Owen Diaz -- I'm sorry. Did you ask
18 the question: Why don't you trust Mr. Martinez?

19 A. I don't recall.

20 Q. Okay. But that's something -- in terms of taking
21 contemporaneous notes, that is something, the type of
22 information that you would want to see inside your notes;
23 right?

24 A. I believe so. It depends on, like, what I'm thinking or
25 doing at that time. I can't speak to that time.

1 Q. If we could go down to the next line where it says "For
2 Additional Notes."

3 It says (as read) :

4 "Afraid of retaliation."

5 That's your handwriting; right?

6 A. Correct.

7 Q. When it says "afraid of retaliation," did you ask Owen who
8 he was afraid of receiving retaliation from?

9 A. Who he was?

10 Q. Yes. You wrote "afraid of retaliation," but we don't know
11 who Owen was afraid of. Did you ask him who he was afraid of
12 receiving retaliation from?

13 A. No, I did not.

14 Q. So you don't know whether it was Ed Romero or Tesla or
15 coworkers? You have no idea?

16 A. No. I can't speak to that.

17 Q. Okay. And then below that it says (as read) :

18 "Feel that picture was racial statement
19 (jigaboo) ."

20 You see that?

21 A. Uh-huh. Yes.

22 Q. And with regard to the notes, your handwritten notes, that
23 wasn't verbatim. You were essentially trying to write down
24 what you could as you had the conversation; right?

25 A. Yes, correct.

1 **Q.** And with regard to that telephone conversation, as you sit
2 here today, you don't have an estimate as to how long that
3 took, I take it?

4 **A.** No, I don't remember.

5 **THE COURT:** Mr. Alexander, would this be a convenient
6 place to break?

7 **MR. ALEXANDER:** Sure, Your Honor.

8 **THE COURT:** All right. So, ladies and gentlemen,
9 let's take our second break of the day, and we'll come back at
10 about, oh, nine past.

11 (Jury exits the courtroom at 11:54 a.m.)

12 **THE COURT:** All right. We'll be in recess for the
13 next 15 minutes.

14 (Whereupon there was a recess in the proceedings
15 from 11:55 a.m. until 12:14 a.m/p.m.)

16 (Proceedings were heard in the presence of the jury.)

17 **THE COURT:** All right. Please be seated, everybody.

18 Mr. Alexander, please proceed.

19 **MR. ALEXANDER:** Thank you, Your Honor.

20 **BY MR. ALEXANDER**

21 **Q.** With regard to the statement that you had wrote based on
22 having a phone conversation with Owen Diaz, did you ever send
23 that statement to Mr. Diaz so that he could confirm the
24 accuracy?

25 **A.** Not that I remember.

1 **Q.** Now, let's go to the statement from Mr. Martinez. If we
2 go to Exhibit 287, 3 through 5, that is a statement that says
3 "Alleged Harasser Investigation Question." It's up in the
4 left-hand corner. Do you see that?

5 **A.** Yes.

6 **Q.** This is a questionnaire on the Chartwell Staffing
7 Solutions for questions that are normally reviewed when you
8 interview the person who is the alleged harasser; right?

9 **A.** Correct.

10 **Q.** Yes?

11 **A.** Correct.

12 **Q.** But the handwriting on this document is not your
13 handwriting.

14 **A.** No, it's not.

15 **Q.** And if you turn to the last page, the document is signed
16 by Ramon Martinez; right?

17 **A.** Yes.

18 **Q.** Okay. Now, typically when you conduct investigations, you
19 don't typically have the individual filling out the statement
20 on their own; right?

21 **A.** It depends.

22 **Q.** Well, in your experience based on the standards, based on
23 your experience as an HR person, you understand that's below
24 the standard of care for purposes of an investigation; right?

25 **MS. JENG:** Objection. Argumentative.

1 **THE COURT:** Overruled. You can answer if you know
2 what the standard of care is.

3 **THE WITNESS:** Yeah. So the standard of care -- I'm
4 not aware of what your standard of care is. So if you can
5 explain that to me, then I can tell you what my standard of
6 care is.

7 **BY MR. ALEXANDER:**

8 **Q.** Based on the training that you've received with regard to
9 the person who is accused of harassment, the standard practice
10 is not for them to write out their own statement, but for you
11 to interview them about the conduct; isn't that right?

12 **A.** Not necessarily. They --

13 **Q.** When you say --

14 **THE COURT:** Let her finish, please. Go ahead.

15 **A.** They have the ability to either write their own statement
16 or be interviewed or both. It doesn't necessarily mean that I
17 can't interview -- I can interview him and him not write a
18 statement.

19 An employee can always write a statement about an incident
20 if they choose to do that. He was able to write an incident so
21 he did.

22 **BY MR. ALEXANDER:**

23 **Q.** So in this instance when you got his written statement,
24 did you interview him?

25 **A.** No, I did not.

1 **Q.** So you would agree that it is a standard practice with
2 regard to a workplace investigation that you interview the
3 person who created the drawing inside the workplace; right?

4 **A.** Correct.

5 **Q.** So in this instance, you didn't ever interview the
6 harasser, the alleged harasser, Mr. Martinez; right?

7 **A.** I don't remember if I did or did not; but if he wrote this
8 out, then I probably didn't.

9 **Q.** Well, if he wrote this out, that wouldn't be a reason not
10 to interview him. You agree with that; right?

11 **A.** Right.

12 **Q.** If anything, this would provide additional information
13 that you could use as a basis for asking him questions to try
14 and get at the truth; right?

15 **A.** Correct.

16 **Q.** So I take it you did review his handwritten document?

17 **A.** I did.

18 **Q.** Okay. So if we could go to the last page of the document,
19 the handwritten document, it says (as read) :

20 "I tell him, Owen, I'm sorry."

21 Could we highlight that, please?

22 Did you ever make any contact with Mr. Martinez to confirm
23 or to find out when he supposedly apologized to Mr. Diaz?

24 **A.** I can't -- I don't recall that.

25 **Q.** So once you saw a reference to an apology, did you contact

1 Mr. Diaz to find out from him whether that was a true
2 statement, the apology?

3 **A.** Not that I remember, no.

4 **Q.** If you found out that Mr. Martinez had made a false
5 statement inside of this document that he wrote, that would
6 cause you to have concern about the reliability of other
7 statements made; right?

8 **A.** Possibly.

9 **Q.** That's the way an investigation works. When you ask
10 questions of a person, you try and figure out whether they're
11 truthful; and if they give you information that you can confirm
12 is untruthful, that causes you to have further questions about
13 the rest of the statement that they give; right?

14 **A.** Uh-huh.

15 **Q.** Yes?

16 **A.** Yes.

17 **Q.** Okay. So in this instance when he said he was sorry, you
18 didn't try to confirm the truth or falsity of that statement;
19 right?

20 **A.** Correct.

21 **Q.** Okay. If we go further down, the last four lines, it says
22 (as read):

23 "I apologized to him again. He also mentioned to
24 me that he was about to send an email to the office;
25 but because it was me, he understand that my meaning

1 on the picture that I draw wasn't bad and he was or he
2 delete the email."

3 Do you see that reference?

4 **A.** Yes.

5 **Q.** Okay. But Exhibit No. 33 is the email that Mr. Diaz
6 actually sent with regard to this incident.

7 You have Exhibit No. 33 in front of you?

8 **A.** Yes.

9 **Q.** Okay. And you would have expected that that document, the
10 report by Mr. Diaz, would have been sent to you with regard to
11 this drawing; right?

12 **A.** Possibly, yes.

13 **Q.** Okay. And so the fact that Mr. Diaz sent that email
14 indicated that this statement made by Mr. Martinez was perhaps
15 not true; right?

16 **MS. JENG:** Objection. Argumentative. Lacks
17 foundation.

18 **THE COURT:** As you sit here now, what's your response
19 to that question?

20 **THE WITNESS:** I'm not sure I understood what you were
21 saying. Can you repeat that?

22 **BY MR. ALEXANDER**

23 **Q.** When you read this statement handwritten by Mr. Martinez
24 where he referred to Mr. Diaz supposedly deleting an email
25 reporting the incident, once you saw Exhibit No. 33, you knew

1 that it wasn't true. Mr. Diaz hadn't deleted it; right?

2 **A.** So you're saying the other email you just showed me,
3 Exhibit No. 33, is the one he's referencing in that statement?

4 **Q.** Yes.

5 **A.** Okay. I -- I mean, I'm looking at this email now, but I
6 can't say that I looked at that email then.

7 **Q.** But once you read this statement where Mr. Martinez
8 claimed to have had a conversation with Mr. Diaz where Mr. Diaz
9 agreed to delete the document based on that conversation, did
10 you check with Mr. Diaz to find out if that was true?

11 **A.** No.

12 **Q.** So if I understand correctly, in order to enter discipline
13 against the employee accused of harassment when you've got a
14 visual picture of what he did, you didn't interview him and you
15 accepted as true everything he handwrote in this document;
16 right?

17 **A.** I believe so.

18 **Q.** Exhibit 287, the January 25, 2016, email, that is the
19 document where you communicated to Veronica Martinez at
20 nextSource what your final decision, your conclusion was;
21 correct?

22 **A.** Yeah. She works for Chartwell.

23 **Q.** She works for?

24 **A.** Veronica works for Chartwell.

25 **Q.** She works for Chartwell. You were communicating to her,

1 "This is my conclusion;" right?

2 **A.** Yeah.

3 **Q.** Okay. And this is the first time that you put in writing
4 what your conclusion was; correct?

5 **A.** I believe so.

6 **Q.** And then Veronica Martinez forwards this on to Wayne
7 Jackson, the person at nextSource; right?

8 **A.** Yes. That's what it says here.

9 **Q.** And the reason you were forwarding it to nextSource is
10 because nextSource was the staffing company that Tesla had
11 hired to kind of be the liaison between all the staffing
12 companies; right?

13 **A.** I believe the reason why she forwarded it, although I
14 can't speak for her, was because she was the employee buying
15 that source.

16 **Q.** You never sent this document directly to Tesla, your
17 email; right?

18 **A.** No, I didn't have communication with Tesla.

19 **Q.** Okay. You did not have communication with Tesla.

20 So your email is dated January 25 at 11:07 a.m. That's
21 about the time where you made a decision as to what you're
22 going to do with regard to recommending discipline of
23 Mr. Martinez; right?

24 **A.** Correct.

25 **Q.** All right. And before you wrote this email, you did not

1 communicate with Tesla or anyone else as to what your
2 determination was going to be as to Mr. Martinez; correct?

3 **A.** I'm not understanding. Like, what do you mean
4 "communicated"?

5 **Q.** You did not speak to anyone about your decision, the
6 discipline that you intended to give to Mr. Martinez, before
7 you sent out this email to Veronica Martinez; right?

8 **A.** Well, I did speak to Jessy Meneses, which was the HR
9 generalist. So that was another person in the HR department.

10 **Q.** You did not speak to anyone outside of Chartwell about
11 your determination as to what the discipline should be as to
12 Mr. Martinez; right?

13 **A.** Right.

14 **Q.** So this email of January 25, 2016, at 11:07 is the first
15 time you put in writing and told anyone "This is what my
16 conclusion is. This is what should happen to Mr. Martinez";
17 right?

18 **A.** Correct.

19 **Q.** Okay. If I could refer you to your deposition transcript,
20 Page 30, Line 23, through Page 31, Line 9. There should be a
21 deposition transcript to your left.

22 **THE COURT:** So that would be the thing that looks like
23 this (indicating).

24 **THE WITNESS:** Oh. This one (indicating)?

25 **THE COURT:** Yes.

1 **BY MR. ALEXANDER**

2 **Q.** And if you turn to Page 30, Line 23, and read down through
3 Page 31, Line 9, I think it will remind you that you had
4 received Exhibit 33, the email from Owen Diaz, reporting this
5 jigaboo.

6 **A.** So I'm looking at Page 31, Line 8 -- 9?

7 **Q.** Start at Line 22.

8 **THE COURT:** Of Page 30.

9 **MR. ALEXANDER:** Of page -- I'm sorry. Of page 30.

10 **MR. ORGAN:** And, Your Honor, for the record,

11 Exhibit 37 is Trial Exhibit 33, as noted in the Exhibit List.

12 **BY MR. ALEXANDER**

13 **Q.** Does that help refresh your memory?

14 **A.** Sorry. I'm confused because everyone is talking. Can you
15 tell me which page? Page 30?

16 **Q.** Page 30, start at Line 23. Go to the next page. Read
17 down to the next page, Line 3.

18 **A.** About the picture?

19 **Q.** Yes.

20 **A.** And the complaint?

21 **Q.** Yes. Does that help refresh your memory that you received
22 Exhibit 33 which attached the photographs of the drawing?

23 **A.** Yeah, but -- I mean, yeah, if I remember receiving the
24 complaint and that was attached to it, then it was attached to
25 it.

1 **Q.** So now going back to my question before, on January 25,
2 2016 at 11:07 for the very first time you put in writing the
3 conclusion that you reached as to the discipline that should be
4 given out to Mr. Martinez; correct?

5 **A.** Uh-huh, correct.

6 **Q.** Yes. On Page 37, if we could go to the last paragraph on
7 the page (as read) :

8 "On our end, Ramon will be returning to the branch
9 office and he will be placed on corrective action with a
10 final warning for harassment."

11 Do you see that reference?

12 **A.** Yes.

13 **MR. ALEXANDER:** If we could put up now Exhibit No. 77,
14 which has been received into evidence?

15 If we could keep 287 available so we can split the screen?

16 **BY MR. ALEXANDER:**

17 **Q.** With regard to Exhibit No. 77, there is an entry from
18 Victor Quintero on June 22nd, 2016, three days earlier.

19 **THE COURT:** January 22nd?

20 **MR. ALEXANDER:** Yes.

21 And if we could show below that, the top of that page.

22 (Document displayed.)

23 **BY MR. ALEXANDER**

24 **Q.** On this document Victor Quintero emailed to Wayne Jackson
25 and says (as read) :

1 "Wayne, as we discussed in person, this is a very
2 disappointing especially" -- "is very disappointing
3 especially coming from one of our team supervisors. I
4 agree with the recommendation to suspend and issue a
5 permanent written warning."

6 **MS. JENG:** Objection, Your Honor. I don't believe
7 this exhibit is admitted.

8 **MR. ORGAN:** I apologize, Your Honor.

9 **THE COURT:** I believe Ms. Jeng is correct.

10 **BY MR. ALEXANDER**

11 **Q.** Do you know of any reason -- do you have any knowledge as
12 to how Tesla or people at Tesla would have known three days
13 before your January 25, 2016 email, why they would have known
14 three days before the discipline that you were giving out to
15 Mr. Martinez?

16 **MS. JENG:** Objection. Calls for speculation. Lacks
17 foundation.

18 **THE COURT:** If you know, you may answer the question.

19 **THE WITNESS:** Yeah, I don't know.

20 **BY MR. ALEXANDER**

21 **Q.** In this instance you did not do a formal written report;
22 correct?

23 **A.** Correct.

24 **Q.** The harasser, the alleged harasser, gave you a handwritten
25 statement and you did not actually interview him; right?

1 **A.** Correct.

2 **Q.** You reached a conclusion -- reached a determination for
3 discipline without interviewing the person who engaged in the
4 offensive conduct; right?

5 **A.** Correct.

6 **Q.** Did someone from Tesla contact you and tell you to stop
7 the investigation?

8 **A.** No.

9 **Q.** Okay. Was there some rush, some reason why you needed to
10 issue the determination on January 25th?

11 **A.** No, I don't believe so. I mean, I try to work through my
12 investigations as quickly as possible because people are out of
13 work.

14 **Q.** You had the ability to interview Mr. Martinez. Is there
15 some reason why you did not think it was important to interview
16 the person accused of harassment based on the visual drawing
17 that you had?

18 **A.** I don't recall.

19 **Q.** Did you have any contact with Wayne Jackson with regard to
20 this incident, the project manager with nextSource?

21 **A.** Not that I recall.

22 **Q.** In order to make a decision about what discipline to give
23 to Mr. Martinez, did you have any discussion with anyone at
24 Tesla in order to find out about that history of incident that
25 had occurred with Mr. Martinez inside the workplace?

A. No, I don't recall.

Q. When you say, no, you don't recall, meaning -- that means you don't recall one way or the other?

A. Yes, I don't recall.

Q. All right.

MR. ALEXANDER: Nothing further.

THE COURT: All right. Thank you.

Ms. Jeng.

CROSS-EXAMINATION

BY MS. JENG

Q. Ms. Delgado, you testified about the complaint made by Owen Diaz on January 22nd, 2016, earlier; correct?

A. Correct.

Q. How did this complaint first come to your attention?

A. Through the staffing branch, Veronica Martinez.

Q. After you received this complaint, you obtained statements from both Owen and Ramon; correct?

A. Correct.

Q. If you could turn back to Exhibit 287, which has been admitted.

(Document displayed.)

Q. This -- 287, 3 through 7. These -- sorry, 3 through 8, these are the two statements from Owen and Ramon; correct?

A. Correct.

Q. Did you determine that Ramon had actually drawn the

1 drawing on the cardboard bale?

2 **A.** Yes. He admitted to it.

3 **Q.** And how -- I guess how did you know that he drew it?

4 **A.** Because he admitted to it on the statement.

5 **Q.** Okay. And so you were able to substantiate Mr. Owen's
6 allegation that Ramon made this drawing based on Ramon's own
7 statement; correct?

8 **A.** Correct.

9 **Q.** Did you feel that you needed to speak with any other
10 witnesses to substantiate Mr. Diaz's allegation?

11 **A.** No. He told me there were no witnesses.

12 **Q.** Mr. Owen told you there were no other witnesses?

13 **A.** Well, yeah. On the notes here, it says that there were no
14 witnesses.

15 **Q.** Okay. And you're referring to 287-7; correct?

16 **A.** Yes.

17 **Q.** Okay. Can you identify where your -- which question
18 you're talking about?

19 **A.** Yes. Number 7 on Exhibit 287-007, it says (as read) :

20 "Were there any other people present when the
21 incident occurred?

22 "No just myself."

23 **Q.** Okay. And from your perspective, was Ramon's statement
24 that he made the drawing consistent with Owen's statement that
25 Ramon made the drawing?

1 **A.** No. I didn't -- I didn't, like, have any of my own, like,
2 thoughts in regards to the picture. So when they each had
3 their own statement, it was what they were each feeling about
4 what they were both complaining about or what one did and the
5 other one was offended by.

6 **Q.** Was there any question in your mind that Ramon had made
7 the drawing?

8 **A.** I mean, only what he admitted to doing.

9 **Q.** Ramon Martinez admitted to drawing it?

10 **A.** Yes.

11 **Q.** Correct, okay.

12 Now, you testified earlier that you didn't further
13 interview Mr. Martinez after he submitted his statement;
14 correct?

15 **A.** Correct.

16 **Q.** Why not?

17 **A.** I don't know if it was just based on the time of
18 everything. I did have a hard time -- I had to get permission
19 from CitiStaff even to interview the other employee.

20 And so I don't know if it had to do with timing, if it
21 had to do with the fact that he was suspended during the
22 investigation. So just having to make this as efficient as
23 possible I -- I really can't give you, like, a firm answer as
24 to why.

25 **Q.** Well, was there any reason to question Mr. Martinez if he

1 had already admitted to the drawing?

2 **A.** No.

3 **Q.** Now, you previously testified that you do sometimes create
4 a formal report of investigation; correct?

5 **A.** Yes.

6 **Q.** Okay. And is the formal report to summarize the
7 allegations?

8 **A.** It depends. In this situation the employee admitted to
9 drawing or doodling on the cardboard.

10 Normally if there is, like, a hearsay situation -- you
11 know, in my job investigations are all different. It just
12 depends.

13 So if there was a black-and-white answer at this point,
14 which was the employee admitted to the drawing, then that's
15 what he admitted to doing.

16 **Q.** Okay. So in your mind, this was a very black-and-white
17 answer that the -- that Mr. Martinez had actually already
18 admitted to the drawing; correct?

19 **A.** Correct.

20 **Q.** Is that why you didn't create a formal report?

21 **MR. ALEXANDER:** Objection. Leading.

22 **THE COURT:** Overruled. You can answer.

23 **THE WITNESS:** Umm, yes. That's why I didn't.

24 **BY MS. JENG**

25 **Q.** Okay. But you did summarize and attach the statements to

1 your email to Ms. Martinez; correct?

2 **A.** Correct.

3 **Q.** When you spoke with Mr. Diaz, did he raise any allegation
4 to you about being called any racial epithets or slurs?

5 **A.** Not that I can recall.

6 **Q.** Okay. Would you have put it in writing in your notes if
7 he did?

8 **A.** Yes.

9 **Q.** I think you previously testified that you were the VP of
10 HR for Chartwell Staffing; correct?

11 **A.** Correct.

12 **Q.** So in the 2015 to 2016 time period, were you ever employed
13 by Tesla?

14 **A.** No.

15 **MS. JENG:** Okay. No further questions.

16 **THE COURT:** All right. Mr. Alexander, anything? Any
17 followup?

18 **REDIRECT EXAMINATION**

19 **BY MR. ALEXANDER**

20 **Q.** With regard to the discipline, if discipline was issued,
21 you would have normally have that signed off by the employee,
22 Mr. Martinez?

23 **A.** Correct.

24 **Q.** Okay. And so that means there should have been some
25 discipline inside of his file; right?

1 **A.** Yes.

2 **Q.** Yes. But as we sit here today, you haven't seen that
3 discipline? You haven't seen a document actually signed by
4 Mr. Martinez at any time with regard to the discipline that you
5 proposed; right?

6 **A.** Like, here today?

7 **Q.** No. From the point you issued this discipline up until
8 now, you've never seen a document signed by Mr. Martinez with
9 regard to the discipline that you proposed; isn't that correct?

10 **A.** Umm, I can't speak to that because it's been five, six
11 years. So I can't speak to something that I may have received
12 over email that I don't remember today.

13 **Q.** So as you sit here today, you don't have any memory of
14 seeing a document signed by Mr. Martinez with regard to the
15 discipline; right?

16 **A.** Right.

17 **Q.** All right. But if it existed, you would expect that your
18 company would have been able to produce it; correct?

19 **A.** Correct.

20 **Q.** All right. With regard to Exhibit -- I refer to
21 Exhibit 77. If I could refer to Exhibit No. 287, which has
22 been agreed to by the parties.

23 **MR. ALEXANDER:** And if we could go to the top of
24 Page 272-002, which is an email from Victor Quintero to Wayne
25 Jackson, Re Racist Effigy and Drawing.

1 If we could blow that up?

2 (Document displayed.)

3 **BY MR. ALEXANDER**

4 **Q.** So with respect to this reference, I'll read this second
5 sentence (as read):

6 "I agree with the recommendation to suspend and
7 issue a permanent written warning."

8 Which is dated January 22, 2016.

9 Did you do anything to communicate information to
10 Mr. Quintero as to what the outcome of your investigation was
11 going to be before you wrote out your letter on -- your email
12 on January 25, 2016?

13 **A.** No. I don't even know who this is. Like, I don't know
14 what this is.

15 **Q.** Now, you were asked a question during the cross. You're
16 saying that because Ramon Martinez admitted to preparing that
17 drawing, that there were no other questions that you thought
18 were appropriate to ask him?

19 **A.** No.

20 **Q.** Okay. So you didn't think it was appropriate to ask him
21 why he wrote that drawing and left it for Owen Diaz?

22 **A.** No.

23 **Q.** Owen Diaz indicated to you that he thought it was a racist
24 drawing. You didn't think it was important to ask Mr. Martinez
25 whether he intended it as a racial attack?

1 **A.** No, I didn't.

2 **Q.** You didn't think it was important to find out whether it
3 was a true statement or not that Mr. Martinez had actually
4 apologized? In other words, he might have written it, but it
5 might not be true. You didn't think it was important to ask
6 him that?

7 **MS. JENG:** Objection. Beyond the scope.

8 **THE COURT:** Yeah. Sustained.

9 **BY MR. ALEXANDER**

10 **Q.** When you said that there were no other questions that you
11 needed to answer once you found out that he had admitted
12 writing the document, didn't you want to ask him whether he had
13 engaged in any other similar conduct inside the workplace?

14 **MS. JENG:** Objection. Outside the scope.

15 **THE COURT:** That was a question that you asked and
16 answered. So you may answer.

17 **THE WITNESS:** I'm not too sure.

18 **BY MR. ALEXANDER**

19 **Q.** I'm sorry?

20 **A.** I'm not too sure.

21 **Q.** When you say you're not too sure --

22 **A.** Yeah. Can you repeat your question again, please? I'm
23 not too sure what you're saying.

24 **Q.** Ah. Given that Mr. Martinez had written this drawing that
25 Mr. Diaz indicated was racist, wouldn't you have wanted to

1 inquire with Mr. Martinez whether he had engaged in any other
2 racially offensive conduct?

3 **A.** Yeah, I probably should have.

4 **Q.** Yes. And your notes that you wrote with regard to
5 Mr. Diaz aren't verbatim what he said; right?

6 **A.** No. I can't -- I can't write verbatim. So, no, they're
7 not.

8 **Q.** And so there are going to be some things that Owen Diaz
9 said that were omitted from the statement; right?

10 **A.** Possibly.

11 **Q.** All right. And so isn't it true that Mr. Diaz, during the
12 conversation with you, told you that this wasn't the first
13 racist incident and that the history that he was referring to
14 in the elevator was also a racial incident?

15 **MS. JENG:** Objection. Argumentative.

16 **THE COURT:** And it's beyond the scope. I think these
17 questions were all asked before, too.

18 **BY MR. ALEXANDER**

19 **Q.** When you're conducting an investigation, in response to
20 the question once you found out that Mr. Martinez had written
21 the document, you didn't have any other further questions.
22 Wouldn't you want to follow up to find out whether this is an
23 isolated incident or whether it's a widespread conduct
24 throughout the workplace?

25 **MS. JENG:** Objection. Beyond the scope.

THE COURT: Sustained.

MR. ALEXANDER: Okay. Nothing further. Thank you.

THE COURT: All right. Thank you.

All right. Anything further with this witness?

MS. JENG: No.

THE COURT: All right.

Thank you. You may step down.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: And who is next?

MR. ORGAN: Victor Quintero, Your Honor.

THE COURT: Great.

VICTOR QUINTERO,

called as a witness for the Plaintiff, having been duly sworn,
testified as follows:

THE WITNESS: Yes.

THE CLERK: If you would please state your full name for the record and spell it for the court reporter.

THE WITNESS: My name is Victor Quintero; V-I-C-T-O-R,
Q-U-I-N-T-E-R-O.

DIRECT EXAMINATION

BY MR. ALEXANDER

Q. Good afternoon, Mr. Quintero.

A. Good afternoon.

Q. Is it correct that you were employed at Tesla?

1 **A.** Yes.

2 **Q.** And during what time frame were you employed at Tesla?

3 **A.** I started in 2014, May.

4 **Q.** And your position there at that time was program manager?

5 **A.** Custodial program manager.

6 **Q.** And you were in charge -- the manager of the facilities
7 department; correct?

8 **A.** Various different services within facilities.

9 **Q.** And then ultimately you were responsible for the recycling
10 area; correct?

11 **A.** Yes.

12 **Q.** And you were -- you had at least approximately 225
13 employees under your direct supervision in various groups;
14 correct?

15 **A.** Not direct supervision, no.

16 **Q.** Indirectly underneath your scope of supervision there were
17 approximately 225 people; right?

18 **A.** Under my management.

19 **Q.** And you were in charge of the contracts associated with
20 the elevator employees; right?

21 **A.** Yes.

22 **Q.** And all of the elevator operators were contract employees?

23 **A.** Yes.

24 **Q.** With regard to Exhibit No. 222 --

25 **MR. ALEXANDER:** I believe that that's been agreed?

1 **THE COURT:** I think it's in also.

2 **MS. KENNEDY:** Yes. It's already admitted, Your Honor.

3 **THE COURT:** Great.

4 **MR. ALEXANDER:** So with regard to this exhibit, if it
5 can be displayed.

6 (Document displayed.)

7 **BY MR. ALEXANDER:**

8 **Q.** This is an indication that you had the ability to
9 determine the salary that was received by the elevator
10 operators such as Owen Diaz; correct?

11 **A.** Say that again.

12 **Q.** You had the ability to determine the salary that would be
13 received by elevator operators such as Owen Diaz; correct?

14 **A.** No, I did not.

15 **Q.** All right. If we could review this document from you to
16 Nancy Uhlenbrock. Ms. Uhlenbrock was at Chartwell. Do you
17 recall that?

18 It says (as read):

19 "Please be aware of the following changes effective
20 today August 17, 2015. Owen Diaz, day shift elevator
21 operator, will transfer to the compressed work week front
22 end grave shift, as the lead elevator operator.

23 Therefore, please increase his salary to \$16."

24 That's an email that was prepared by you; is that correct?

25 **A.** No. That was the set rate for that position based on the

1 contract.

2 **Q.** And so when it says please increase the salary, you're
3 determining that he would get an increase in salary; correct?

4 **A.** Based on the lead elevator position.

5 **Q.** Everyone who works inside of the Tesla factory has to take
6 safety training; correct?

7 **A.** Everybody who enters the factory, yes.

8 **Q.** Regardless of whether they're a contract employee or
9 direct Tesla employee; correct?

10 **A.** Yes.

11 **Q.** With regard to the zero tolerance policy that Tesla has,
12 that policy is not taught to all the contract employees who
13 enter inside the building; correct?

14 **A.** Say that again.

15 **Q.** The zero tolerance policy for harassment inside the
16 workplace, contract employees, they aren't trained on that
17 Tesla policy before they are allowed to enter inside the doors;
18 isn't that correct?

19 **A.** I don't know. I don't know.

20 **Q.** With regard to the Anti-Handbook Handbook, contract
21 employees are not trained on that handbook as a prerequisite
22 for them to work inside of the factory; isn't that correct?

23 **A.** I don't know that either.

24 **Q.** Okay.

25 **MR. ALEXANDER:** If we could show Exhibit No. 33, which

1 has previously been received into evidence.

2 (Document displayed.)

3 **BY MR. ALEXANDER**

4 **Q.** With regard to Exhibit No. 33, do you recall receiving
5 this email from Owen that had the photographs -- I'm sorry --
6 the drawing that was made by Ramon Martinez?

7 **A.** Yes. I believe it was forwarded to me by Ed Romero.

8 **Q.** Okay. And at the point when you saw this, you just
9 thought that it was a drawing; is that correct?

10 **A.** Yes, the cartoon character.

11 (Photograph displayed.)

12 **Q.** And at the point when you saw it, it did not offend you;
13 right?

14 **A.** Not me personally, no.

15 **Q.** And at the point that you received it, you had no previous
16 experience with the term "picaninny" or "jigaboo;" is that
17 correct?

18 **A.** That is correct.

19 **Q.** But based on your conversation with Wayne Jackson, you
20 found out that it was a derogatory cartoon; right?

21 **A.** Yes. It was explained to me, yes. Yeah.

22 **Q.** There was a statement that was obtained from Ramon
23 Martinez. Did you ever review that statement, the statement
24 that he wrote?

25 **A.** No, I don't believe so. No.

1 **Q.** Okay. Now, there was a discussion that occurred between
2 you and Mr. Jackson about what discipline Ms. Martinez should
3 receive; is that correct?

4 **A.** Yes.

5 **Q.** And in that discussion is it a correct that Mr. Jackson
6 recommended to you that Mr. Martinez be terminated?

7 **A.** I remember we talked about various options, yes.

8 **Q.** I'm asking you a specific question. Is it correct that
9 the Mr. Jackson, when he was discussing what should occur with
10 regard to Mr. Martinez, specifically recommended that
11 Mr. Martinez be terminated?

12 **A.** I don't remember that.

13 **Q.** The discipline that ultimately was given, three days
14 suspension without pay --

15 **A.** And a permanent written warning.

16 **Q.** Let's talk about the permanent written warning. I've
17 never seen that document.

18 Have you seen the Martinez document, the permanent written
19 warning that was supposed to be given?

20 **MS. KENNEDY:** Objection. Relevance as to whether
21 Mr. Alexander has ever seen it.

22 **THE COURT:** Sustained. So strike that part of the
23 question, but you can answer the question as to whether you've
24 ever seen it.

25 **THE WITNESS:** I don't believe I personally saw it. I

1 don't remember.

2 **BY MR. ALEXANDER**

3 Q. With regard to a written reprimand, is it your
4 understanding that the person who receives the written
5 reprimand should sign it and date it as confirmation that they
6 received the reprimand?

7 A. Umm, I don't know what the employer of record's policy was
8 in that respect.

9 Q. At the point when you made a decision with regard to what
10 to do with Mr. Martinez, it was your belief that this was the
11 first time Mr. Martinez had had an incident of this nature
12 inside the workplace; correct?

13 A. Yes.

14 Q. So with regard to Mr. Martinez at the point where you
15 determined discipline, you were not aware of a previous
16 incident where Owen had indicated -- reported that he had been
17 attacked inside of the elevator by Mr. Martinez; right?

18 A. I did not remember any previous incident at the time.

19 Q. When you say you didn't remember, are you saying as you
20 sit here today that you knew about that incident at the time of
21 the discipline but had forgotten about it?

22 A. I didn't -- at the time of the -- at the time when we made
23 the decision between myself and Wayne, I -- I had no -- I
24 didn't remember any previous incidents.

25 Q. Okay. So at the time that you determined the discipline

1 for Mr. Martinez, you did not take into consideration the
2 confrontation that occurred in the elevator between Mr. Diaz
3 and Mr. Martinez; correct?

4 **A.** I did not remember any previous incidents at the time.

5 **Q.** As opposed to didn't remember, you weren't aware?

6 **A.** No, I didn't remember. No.

7 **Q.** The reason I'm stuck is when you say you don't remember,
8 that's -- you didn't remember, it suggests that you knew it at
9 some point and had just forgotten it.

10 **MS. KENNEDY:** I object -- I'm sorry. Objection.

11 Argumentative.

12 **THE COURT:** Overruled. I think there may be a
13 communication issue going on.

14 **BY MR. ALEXANDER**

15 **Q.** And so what I'm trying to figure out is, on the date that
16 you were having a conversation with Wayne Jackson about the
17 discipline that should be issued to Mr. Martinez, on that date
18 did you know about the elevator confrontation?

19 **A.** No. No, on that day I did not.

20 **Q.** And with regard to the discipline that was actually
21 issued, is it a correct statement that you decided that it
22 should be the three-day suspension?

23 **A.** I remember it was a joint decision between myself and
24 Wayne. I believe he was the one who recommended, and I agreed.

25 **Q.** Isn't it true that you wanted to give a verbal warning

1 with no suspension?

2 **A.** I -- I made recommendations based on the fact that any
3 time an incident like this happened, a corrective action had to
4 be implemented so it didn't happen again.

5 The employer of record ultimately was the one who made the
6 final call. I felt it was my responsibility to make sure that
7 they -- whatever decision they made, that it was so that the
8 issue was addressed and that it never happened again on Tesla
9 property.

10 **Q.** Were you aware that Mr. Diaz had made other complaints of
11 racial treatment inside the workplace?

12 **A.** No. No.

13 **Q.** If I could show you Exhibit No. --

14 **MR. ALEXANDER:** If we could show Exhibit No. 41? If
15 you could display -- I don't know it's been received.

16 **MS. KENNEDY:** I'm sorry, Bernard. 41 or 31?

17 **MR. ALEXANDER:** 41.

18 **MS. KENNEDY:** Thank you.

19 It's admitted. There's no objection.

20 **THE COURT:** Okay.

21 (Document displayed.)

22 **BY MR. ALEXANDER**

23 **Q.** With regard to Exhibit No. 41, it will be displayed, that
24 is a reference to Owen Diaz complaining about Judy Timbreza
25 making racially offensive remarks.

1 And do you see where above that you say "Thank you" and it
2 says "VQ"?

3 **A.** Yes.

4 **Q.** And so that was an indication that you had received
5 previous information from Mr. Diaz that he had been subjected
6 to racially offensive remarks based on his report; right?

7 **A.** Yeah. Yeah.

8 **Q.** Had you received information during the time frame of 2015
9 to 2016 that the "N" word was being used inside the workplace?

10 **A.** No.

11 **Q.** Had you received information between 2015 and 2016 that
12 graffiti was present inside the bathrooms at Tesla?

13 **A.** Graffiti, yes.

14 **Q.** I'm sorry?

15 **A.** Graffiti, yes.

16 **Q.** And what graffiti were you aware of that existed between
17 2015 and 2016 inside the bathrooms?

18 **A.** Different -- different -- different types of graffiti.

19 Like --

20 **Q.** Racial graffiti?

21 **A.** I don't -- I don't believe it was mainly racial. I
22 believe it was mainly --

23 **Q.** I'm sorry?

24 **A.** I don't believe it was mainly racial. I believe it was,
25 like, drawings and just different -- different things.

1 **Q.** When you say not mainly, I'm not looking for mainly. Was
2 there racial references like the "N" word inside the Tesla
3 bathrooms between 2015 and 2016?

4 **A.** I don't remember if it was racial.

5 **Q.** Let me -- if you could look at Exhibit No. 109. Inside
6 the notebook next to you there should be an Exhibit 109. It
7 should be the white notebook.

8 **MR. ORGAN:** White notebook. That one.

9 **BY MR. ALEXANDER**

10 **Q.** That one. Is there an Exhibit 109 in that?

11 **A.** I don't see a 109.

12 **MR. ALEXANDER:** If we could display it for the
13 witness, but not others?

14 **MS. KENNEDY:** Your Honor, this is beyond the scope. I
15 believe this was an issue that was brought up at a prior
16 hearing.

17 **THE COURT:** I can't see it at the moment, so I have no
18 idea what it is.

19 **MS. KENNEDY:** It's May of 2016.

20 **THE COURT:** Okay. That is beyond the scope then.

21 **MR. ALEXANDER:** Your Honor, I'm making an inquiry to
22 find out whether he had seen information that was present
23 during the time frame of 2015 to 2016 inside the scope, the
24 day --

25 **THE COURT:** You can ask it -- you can ask him whether

1 this refreshes his recollection.

2 **BY MR. ALEXANDER**

3 **Q.** So with regard to Exhibit No. 109, if you could look at
4 the 109-3. Was that information -- was that what you see on
5 that page present inside the bathrooms between 2015 and 2016?

6 **A.** I don't -- I don't remember. I don't remember this.

7 **Q.** Do you remember the "N" word being scrawled in the
8 bathroom between 2015 and 2016?

9 **A.** Not really. I really -- I don't remember.

10 **Q.** Did you walk around the workplace during the time frame of
11 2015 to 2016?

12 **A.** Occasionally.

13 **Q.** Okay. And when you say "occasionally," once a week?
14 Twice a week?

15 **A.** Once a week I would say.

16 **Q.** And when you walked around, did you walk around the area
17 like the elevators or the battery area or places like that?

18 **A.** I would go by, yes.

19 **Q.** I understand there are cafeterias. Did you walk around
20 the cafeterias?

21 **A.** Yes.

22 **Q.** In walking around the facility, did you ever hear the
23 "N" word?

24 **A.** No.

25 **Q.** Not once?

1 **A.** Not once.

2 **Q.** I just want to -- and were you generally present every
3 day, every workday in 2015-2016?

4 **A.** Yeah. I was averaging 12 hours a day, 12 to 14 hours a
5 day.

6 **Q.** And the areas that you walked around, were there employees
7 working, contract workers, contract employees working in those
8 areas?

9 **A.** Yeah. My -- the people who were under me.

10 **Q.** And so there is no word of the "N" word that you ever
11 heard at any time during the year 2015 to 2016?

12 **A.** Absolutely not.

13 **Q.** Absolutely not.

14 **A.** At least not in front of me.

15 **Q.** Did anyone report to you that the "N" word was being used
16 inside the workplace between 2015 and 2016?

17 **A.** No.

18 **Q.** So Ramon Martinez -- I'm sorry.

19 Ed Romero, he did not report the "N" word being used?

20 **A.** I don't remember, no. I would have remembered that.

21 **Q.** Okay. Wayne Jackson, you're familiar with him; right?

22 **A.** Yeah.

23 **Q.** Did he ever indicate to you that the "N" word was being
24 used inside the workplace?

25 **A.** No.

1 **Q.** With regard to Ramon Martinez, after the discipline that
2 was issued to him, he ultimately became a direct employee of
3 Tesla; is that right?

4 **MS. KENNEDY:** Objection. Beyond the scope.

5 **THE COURT:** Overruled. You can answer.

6 **BY MR. ALEXANDER**

7 **Q.** Mr. Martinez, he became a direct Tesla employee after this
8 discipline that was issued by you; right?

9 **A.** He was -- a lot of the contract employees became Tesla
10 employees later, at a later time.

11 **Q.** I'm asking for your knowledge. Do you have knowledge that
12 after this incident regarding the racist drawing, that
13 Mr. Martinez was hired as a direct Tesla employee?

14 **A.** Yes, I believe so.

15 **Q.** And you approved that. You had to approve that; right?

16 **A.** It was not up to me to approve.

17 **Q.** Could you turn to Exhibit No. 106, please?

18 **MR. ALEXANDER:** I believe it's been received in
19 evidence.

20 **MS. KENNEDY:** Yes. No objection.

21 **THE COURT:** Okay. It can be shown.

22 (Document displayed.)

23 **BY MR. ALEXANDER**

24 **Q.** With regard to this document, it is from Ed Romero to you
25 dated December 30, 2015. Do you recall Mr. Romero reporting to

1 you an incident involving Javier Temores and Troy Dennis and
2 you said the "N" word?

3 **MR. ALEXANDER:** If we could display the bottom part of
4 the screen, below that.

5 **BY MR. ALEXANDER:**

6 **Q.** Have you had an opportunity to review that document?

7 **A.** Just the bottom part. Can you make it so that I can --
8 (Document displayed.)

9 **A.** Can you make it smaller?

10 I don't remember this. I don't remember this.

11 **Q.** So this report that's inside Exhibit 106 where you were
12 notified of use of the "N" word, you had forgotten that when
13 you testified a moment ago that no one had ever reported use of
14 the "N" word?

15 **A.** Yes. Yes.

16 (Brief pause.)

17 **Q.** Let me have you look at... Let me ask you, please, to
18 look at Exhibit No. 83.

19 **MR. ALEXANDER:** It's being marked, but it has not been
20 received.

21 (Trial Exhibit 83 marked for identification)

22 **BY MR. ALEXANDER:**

23 **Q.** Inside your notebook, sir, there is an Exhibit 83, I
24 believe.

25 **A.** It's right here. It's right here.

1 **Q.** Okay. Do you recognize this as a true and correct copy of
2 an email between you and Ed Romero?

3 **A.** Yes.

4 **MR. ALEXANDER:** May Exhibit No. 83 be received into
5 evidence?

6 **MS. KENNEDY:** No objection.

7 **THE COURT:** It's admitted.

8 (Trial Exhibit 83 received in evidence)

9 **BY MR. ALEXANDER:**

10 **Q.** And if could you go down to --

11 **THE COURT:** It may be published.

12 (Document displayed)

13 **BY MR. ALEXANDER:**

14 **Q.** -- about halfway down the page to the February 26, 2016,
15 at 1:24 a.m. entry, the second line where it says (as read) :

16 "Tonight my lead approached him" -- meaning
17 Owen -- "to talk to him, and he said for my associates
18 to only talk to him if it is related to business
19 because there are so many snakes here at Tesla."

20 Do you see that reference?

21 **A.** Yes.

22 **Q.** And your response above at the top says (as read) :

23 "From my perspective, we may need to ask Wayne to
24 give him a final warning; and if we continue to
25 receive complaints, he must be terminated."

1 Do you see that reference?

2 **A.** Yes.

3 **Q.** With regard to Owen not talking to people except related
4 to business, was Owen required to have conversations with
5 people that were harassing him?

6 **MS. KENNEDY:** Objection. Lack of foundation.

7 **THE COURT:** Overruled. You can answer.

8 **THE WITNESS:** Say that again.

9 **BY MR. ALEXANDER**

10 **Q.** Was Owen required to have conversations with people that
11 were harassing him?

12 **A.** I mean, it doesn't -- it doesn't say he was being
13 harassed.

14 **Q.** I understand. What I'm asking you is: If Owen was
15 willing to talk to his coworkers about work but not willing to
16 talk to them about anything else, isn't that all that he is
17 required to do?

18 **A.** I don't -- I don't understand.

19 **Q.** If Owen Diaz said "Only talk to me about work," because
20 the people he was saying that to are harassing him, he had
21 every right to do that because --

22 **A.** I -- I was not aware that he was being harassed at that
23 time.

24 **Q.** Okay. So you agree that he did not have to speak to his
25 harassers other than with regard to work; correct?

1 **A.** Say that again.

2 **Q.** You agree that Mr. Diaz only had an obligation to speak to
3 coworkers about work. He had the right not to speak with them
4 if they were harassing him; correct?

5 **A.** Well, if they were harassing him, then we -- we would have
6 investigated and took corrective action.

7 **Q.** If you could answer my question. Mr. Diaz had the right
8 to refuse to talk to his harassers about anything except for
9 work. He only had to talk to them about work.

10 **A.** Work related, yeah. There is no reason to discuss
11 harassment, you know.

12 **Q.** Okay. And did you ever conduct any type of investigation
13 with Owen to find out why it is he made this statement only
14 talk to him if it is related to business? You did not; right?

15 **A.** As far as I know, it was investigated and followed up on.

16 **Q.** If you could answer my question. You did not ever speak
17 to Owen to find out why he said he would only speak to this
18 person about business; right?

19 **A.** Oh, I did not speak to Owen personally myself.

20 **Q.** And you're not aware of anyone else interviewing Owen to
21 find out why he refused to speak to these individuals about
22 anything other than business; right?

23 **A.** I was -- I was aware that Ed Romero was addressing the
24 issue with I believe it was Wayne at the time.

25 **Q.** If you had information that the "N" word was being used

1 inside the Tesla workplace, that should not be tolerated;
2 correct?

3 **A.** Yes.

4 **Q.** Okay. And if you were made aware that the "N" word was
5 being used inside the workplace, that would be a circumstance
6 where there should be corrective action taken; right?

7 **A.** Yes.

8 **Q.** And so if you were to find out that the "N" word was being
9 used throughout the workplace, you would expect that there
10 would be retraining that would occur for all of the employees;
11 right?

12 **A.** Or corrective action, some correction action, some form
13 of -- some form of corrective action.

14 **Q.** Some form of sensitivity training or something along that
15 line would be appropriate if people were regularly using the
16 "N" word inside the workplace; right?

17 **A.** Some type of corrective action, yes.

18 **Q.** So the only reason that you didn't instruct there to be
19 retraining or sensitivity training is because in your dealings
20 inside the workplace, you weren't aware of the "N" word being
21 used except for that one report inside Exhibit 106; right?

22 **MS. KENNEDY:** Objection to the form. Lack of
23 foundation. Calls for speculation.

24 **THE COURT:** Sustained.

1 **BY MR. ALEXANDER**

2 **Q.** If you had become aware that the "N" word was being used
3 on a daily basis inside the workplace, you agree that that
4 would warrant having retraining; yes?

5 **A.** It would not be up to me to do the training. I was not --
6 I was not involved in the training department or -- you know,
7 that would have been a decision that would have been made
8 probably by HR or, you know, somebody like that.

9 **Q.** So even if you heard the "N" word, that wouldn't be
10 something that would prompt you to initiate retraining in the
11 workplace. It would be someone else's job.

12 **A.** I might recommend it, like I did in the Ramon case or
13 incident.

14 **MR. ALEXANDER:** With regard to Exhibit No. 272, which
15 I believe has been received into evidence, if you could display
16 272 and go to the same spot.

17 And if we could blow that up.

18 (Document displayed.)

19 **BY MR. ALEXANDER:**

20 **Q.** This email was written on January 22, 2016, by you. Do
21 you see that? Do you see that, Mr. Quintero?

22 **A.** No, I don't see it.

23 **MR. ALEXANDER:** Could you show him that page, please?

24 (Document displayed.)

1 BY MR. ALEXANDER:

2 Q. Do you see that that email was written by you?

3 A. Yes. Yes.

4 Q. And then in regard to the email, it says (as read):

5 "I agree with the recommendation to suspend and
6 issue a permanent written warning."

7 Who did you receive that recommendation from?

8 A. Wayne. Wayne Jackson.

9 Q. Okay. And at the point when you received this
10 recommendation, was that before or after you had found out what
11 the company that Mr. Martinez was working for was going to
12 determine in terms of the discipline?

13 A. No. I didn't know what his employer of record was
14 recommending or -- well, I'm assuming it was communicated to
15 Wayne maybe and then Wayne communicated it to me.

16 Q. So what you're saying is at the point when you wrote this
17 email on January 22nd, it was based on a determination that had
18 already been made by the staffing company that was being
19 communicated through Mr. Jackson? Is that your recollection?

20 A. I don't -- I don't remember being notified from the
21 staffing company what their decision was.

22 Q. Okay.

23 A. I mean, I assumed it was Wayne representing the companies,
24 you know, or the company.

25 Q. You assumed that Wayne Jackson was telling you information

1 based on the information he had based on the investigation
2 conducted as to the jigaboo; is that correct?

3 **A.** I don't -- I don't know where Wayne got his information or
4 how he made his decision, but it was communicated to me and I
5 agreed. My main concern was to make sure corrective action was
6 taken to prevent it from happening again.

7 **MR. ALEXANDER:** Nothing further.

8 **THE COURT:** All right. Thank you, Mr. Alexander.

9 Ms. Kennedy?

10 **MS. KENNEDY:** Yes, Your Honor, and we will be finished
11 by 1:30.

12 **THE COURT:** Don't make promises you can't keep.

13 **MS. KENNEDY:** Okay. 1:35.

14 **CROSS-EXAMINATION**

15 **BY MS. KENNEDY**

16 **Q.** Good afternoon, Mr. Quintero.

17 **A.** Good afternoon.

18 **Q.** A few follow-up questions for you.

19 I believe you testified in response to Mr. Alexander's
20 questions that you oversee about 200 or so employees; is that
21 correct?

22 **A.** Approximately, or more.

23 **Q.** And are those all in the recycling and janitorial areas or
24 other areas of the facility?

25 **A.** Other areas.

1 **Q.** What areas are those?

2 **A.** Like, food services, landscaping, confidential paper
3 removal. I think that was it. It could have been more.

4 **Q.** Okay. I understand that you -- you understand that
5 Mr. Martinez became a Tesla employee at some point in time?

6 **A.** Yes.

7 **Q.** Do you know if that was in 2019 or 2020?

8 **A.** I don't remember.

9 **Q.** Did you know if it was in 2015 or '16, or do you have any
10 idea?

11 **A.** It would have been later.

12 **Q.** Okay. Do you know what Mr. Martinez's role is now at
13 Tesla?

14 **A.** He's a supervisor.

15 **Q.** Is it your understanding that since the incident with the
16 cartoon or the drawing in January of 2016, to your knowledge
17 has Mr. Martinez had any HR issues at all?

18 **A.** No. I'm not aware of him having any HR issues.

19 **Q.** Do you know if there has been any complaints about
20 Mr. Martinez's workplace behavior at any time since he became a
21 Tesla employee?

22 **A.** No. At the time I didn't remember.

23 **Q.** All right. Let's go -- quick question about the cartoon.
24 Let's go to Exhibit 272, please, which Mr. Alexander was just
25 showing you, and the emails.

1 **MS. KENNEDY:** Stephanie, can we go to the last page?

2 (Photograph displayed.)

3 **MS. KENNEDY:** There we go.

4 **BY MS. KENNEDY:**

5 **Q.** Do you see -- this is 272 at Page 5. Is this -- do you
6 recall if you actually saw the entire photo with the, as
7 Mr. Diaz calls it, the racist effigy to the right or the
8 cartoon? Did you see the other drawings to the left? Do you
9 recall that?

10 **A.** No, not really.

11 **Q.** Do you see where that square is? It's kind of hard to
12 see.

13 (Photograph enlarged)

14 **Q.** My question to you is: When you got this email or had any
15 discussions, do you remember if anyone talked at all about this
16 part of it, this Pac-Man?

17 **A.** No. No. It was mainly just about the other part.

18 **Q.** And your understanding was that Mr. Diaz was upset about,
19 how he phrased it, the racist effigy, but he didn't have any
20 concerns about the Pac-Man; correct?

21 **A.** Not that I was made aware of.

22 **Q.** All right. Thank you.

23 Let's go to 106, please, that was admitted for a limited
24 purpose.

25 Take a look at the bottom email. Mr. Alexander asked you

1 some questions about it. The bottom email, which was from Ed
2 Romero to Wayne Jackson, and you're copied on it, sir. At the
3 bottom it talks about two employees, Troy Dennis and Javier
4 Temores. Do you see that?

5 **A.** Yes.

6 **Q.** Do you know either of those employees?

7 **A.** No.

8 **Q.** Do you know anything about this incident other than what's
9 reported to you?

10 **A.** Just what it shows here now that you're showing it to me.

11 **Q.** Okay. At some point in time, Mr. Quintero, were you
12 advised that the staffing agency CitiStaff was ending
13 Mr. Diaz's contract with CitiStaff?

14 **A.** No.

15 **Q.** At some point in time were you advised that Joyce
16 DelaGrande did not want to have Mr. Diaz as the lead elevator
17 operator?

18 **A.** Yes.

19 **Q.** And what was your understanding as to how that came about?

20 **A.** Well, Ed Romero forwarded me the emails where she was
21 communicating the issues.

22 **Q.** And did you have any involvement as to whether or not
23 Mr. Diaz was going to be made the non-lead elevator operator?

24 **A.** Say that again.

25 **Q.** Were you involved in any decision-making or conversations

1 as to Mr. Diaz no longer being the lead elevator operator?

2 **A.** I -- I remember corresponding with Ed about the issue and
3 just basically making sure that it got resolved with -- you
4 know, between him and employer of record, which was standard
5 operating procedure.

6 **Q.** Did you ever have any conversation at any point in time
7 with Owen Diaz about any aspects of his workplace?

8 **A.** No.

9 **MS. KENNEDY:** I have no more questions, Your Honor.

10 **THE COURT:** All right. Mr. Alexander? Do you have
11 any redirect?

12 **MR. ALEXANDER:** First with Exhibit No. 272, if we
13 could display that. If we could go to the bottom, the
14 photographs.

15 Does this have the photographs? If we could go to the
16 left and show those other drawings that are on the edge.

17 (Photograph displayed.)

18 **REDIRECT EXAMINATION**

19 **BY MR. ALEXANDER:**

20 **Q.** With regard to the drawings that are on the side, the left
21 edge of this item, is there -- did you actually try and figure
22 out what was on this? What the writing was?

23 **A.** I -- I -- I don't know. I didn't -- it was not --

24 **Q.** Did you --

25 **A.** It was not discussed or anything.

1 Q. Did you get any explanation as to why it was put there or
2 anything like that?

3 A. No.

4 Q. Okay. Any conversation with Mr. Martinez or someone who
5 had spoken to Mr. Martinez who explained why that was there?

6 A. No. All the conversations was -- had to do with the
7 other, the cartoon character part.

8 Q. Okay. The reference to "booo" that appears in the center
9 of the screen, did you receive any information as to why the
10 "booo" was placed there?

11 A. No.

12 Q. Other than Exhibit 106, did you ever receive any other
13 emails that referenced the "N" word?

14 A. Other than what you showed me here.

15 Q. Yes. Other than what I showed you in Exhibit 106, are
16 there any other emails that you've received that reference the
17 "N" word?

18 A. Not that I can remember.

19 Q. Thank you.

20 MR. ALEXANDER: Nothing further.

21 THE COURT: All right. Thank you.

22 Anything else?

23 MS. KENNEDY: No more questions, Your Honor.

24 THE COURT: All right. Mr. Quintero, you can step
25 down and you're excused. Thank you very much.

1 (Witness excused.)

2 **THE COURT:** And, ladies and gentlemen, we're going to
3 leave three minutes early today. That's sort of the benefit
4 that you get from being early.

5 So thank you for your attention to what's going on. I
6 just want to remind you that we are -- the trial is moving
7 along at a good clip, and there is still a lot to come.

8 So keep an open mind. Don't talk about it with anybody.
9 Don't try and do your own research. You are learning
10 everything that you need to learn from here and from the
11 exhibits.

12 So with that, I hope you have a great afternoon and I'll
13 look forward to seeing you. And if we can start a little early
14 again tomorrow, I think that would be great for all of us.

15 (Jury exits the courtroom at 1:28 p.m.)

16 (Proceedings were heard out of presence of the jury:)

17 **THE COURT:** All right. Have a good afternoon.

18 **MS. KENNEDY:** Thank you, Your Honor.

19 **MR. ORGAN:** Your Honor, in terms of tomorrow -- so
20 tomorrow I just want to -- in terms of tomorrow, we're going to
21 have Mr. Wheeler come back, so he'll start the day.

22 Then depending on how long that goes, it's our intent to
23 play Demetric's testimony, which is now down to about seven --
24 about seven minutes, Your Honor.

25 And then we will call Mr. Diaz.

1 And if there's any time left, La'Drea Jones.

2 THE COURT: Okay.

3 MR. ORGAN: And based on the time estimates, that
4 should fill it out.

5 THE COURT: Okay.

6 MR. ORGAN: We still have the McGinn testimony in our
7 pockets, and we'll try and get Marconi, but I don't know that
8 that gives defense enough time to respond. So -- we've already
9 sent a response.

10 So if you rule on that -- yeah, if you rule on that, then
11 we would have that in reserve, but I don't know that we'll need
12 it for tomorrow.

13 THE COURT: Okay. So I won't put anything out on ECF.
14 I will rule first thing in the morning on that, and then you
15 can go from there.

16 MR. ORGAN: There is one issue, Your Honor, and that
17 is with respect to Exhibit 3. Exhibit 3 is the contract
18 between -- the Master Services Agreement with Tesla and
19 nextSource.

20 And if you look at the Witness List, we had a witness
21 associated with that, Chuck Shehadi, who we pulled because they
22 agreed that this is authentic. However, it was our intent to
23 try and bring that -- or bring him in with Annalisa Heisen, who
24 was the PMK on many topics.

25 So I'm not sure how we are going to get that piece of

1 evidence in, except it's certainly an admission of a party
2 opponent because it's a contract that they have signed. It's
3 authentic. We agree it's authentic. And so it's our belief
4 that that should come into evidence. We've lost the witness
5 that we can get it in through.

6 **THE COURT:** So did you use it during her PMK?

7 **MR. ORGAN:** No, we didn't, Your Honor. We did not,
8 no.

9 **THE COURT:** And since she's -- she was going to be
10 remote. How were you going to arrange --

11 **MR. ORGAN:** No. She was coming in live, Your Honor.

12 **THE COURT:** Oh, she was?

13 **MR. ORGAN:** Yes.

14 **MS. JENG:** No, she wasn't. She was remote.

15 **MR. ORGAN:** Who? Heisen?

16 **MS. JENG:** Yes. She can't travel.

17 **MR. ORGAN:** No, I understand she can't travel. My
18 understanding was I was told she was coming in today.

19 **MS. JENG:** No. He was asking whether she's going to
20 testify by Zoom or in person.

21 **MR. ORGAN:** In person is what I thought.

22 **MS. JENG:** She's not cleared to travel.

23 **MR. ORGAN:** I totally understand that. The
24 representation to us was not a Zoom. I thought she was going
25 to be here in person.

1 **THE COURT:** First, I think you ought to check with
2 your team. If it was a shock to you that she was nine months
3 pregnant and that wasn't communicated to you, then I'll think
4 about how that plays; but that would be surprising to me
5 because --

6 **MR. ORGAN:** All I knew she was on maternity leave,
7 Your Honor. I assumed she already had her baby. It was news
8 to me when we came in this morning when they said she's in
9 labor. That's the first that I heard about it.

10 **THE COURT:** Did you know that she was going to be
11 testifying by Zoom today?

12 **MR. ORGAN:** No. I thought she was going to be live.

13 **THE COURT:** Okay. I'm going to let the lawyers
14 communicate about this specific issue.

15 And with respect to Exhibit 3, I mean, it does appear to
16 be a document that could come in. I'm not sure what the
17 concern is. So figure out whether this is a real issue one way
18 or another for Tesla. And then if I need to rule on it, I'll
19 rule on it. But I think you all ought to talk about it.

20 **MR. ORGAN:** Thank you, Your Honor.

21 **MS. JENG:** Thank you, Your Honor.

22 (Whereupon at 1:33 p.m. further proceedings were
23 adjourned until Wednesday, September 29, 2021 at
24 8:00 a.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Tuesday, September 28, 2021